Oregon
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TO: Land Conservation and Development Commission

FROM: Bob Rindy, Senior Policy Analyst

SUBJECT: **Agenda Item 3, January 22, 2015, LCDC Meeting**

PUBLIC HEARING AND PROPOSED ADOPTION OF ADMINISTRATIVE RULES CONCERNING POPULATION FORECASTING

I. AGENDA ITEM SUMMARY

This item is intended for a public hearing and possible adoption of new and amended administrative rules regarding population forecasting. The Department of Land Conservation and Development's (DLCD and/or department) recommended new and amended rules are Attachment A to this report. Current Population Rules at OAR 660, division 24, as proposed to be repealed or amended, are Attachment B to this report.

The department has provided broad notice regarding the proposed rules (Attachment C). These new and amended rules are required by legislation enacted in in 2013, House Bill 2253 (Attachment D).

Related rules adopted by Portland State University Population Research Center regarding its methodology and process for issuing population forecasts are in Attachment E. A description of the PRC forecasting process, along with a map showing the forecast schedule for various jurisdictions, is Attachment F. Related forecasts of county population, issued by the Office of Economic Analysis, are Attachment G.

Comments received prior to the issuance of this report are in Attachment H. The department's notice allowed for comments on this item until close of the item, so it is anticipated that additional comments will be submitted after mail-out of this report. The department may send a supplemental report addressing comments, or provide the report at the hearing.

For additional information about this item, please contact Bob Rindy, Senior Policy Analyst, at 503-934-0008 or by email at bob.rindy@state.or.us. Information about the population forecast rulemaking process is on the department's website at the following link: http://www.oregon.gov/LCD/Pages/Population-Forecasting.aspx

II. BACKGROUND

Population forecasts are an essential, core element of long range land use planning. Historically counties have been required to adopt "coordinated" population forecasts for all the urban areas (i.e., areas within urban growth boundaries: UGBs) and the rural areas in that county. Similarly, Metro has adopted forecasts for the Metro UGB and allocated those to cities in the UGB. County forecasts have been required to be in county comprehensive plans and they also apply to the cities (and UGB areas) in the county, whether or not they are specifically adopted in each city comprehensive plan.

There have been a number of problems with these requirements over the long term. Population forecasts are often very expensive for local governments, highly controversial, and have been the subject of prolonged litigation. Moreover, several counties have not adopted a forecast and many county forecasts are more than 10 years out of date. Many cities desire to update their land use plans and UGBs but cannot do so without an up-to-date coordinated county forecast.

In 2011, a work group was established to consider this problem, co-sponsored by DLCD, the League of Oregon Cities (LOC), Association of Oregon Counties (AOC), and Oregon Consensus. The group included representatives of local governments, key stakeholders and state agencies, and agreed to draft and support legislation to resolve problems with population forecasting. That group reached consensus on proposed solutions, and proposed a legislative concept that was ultimately submitted by DLCD and Governor's Office for the 2013 Legislative Session. That legislation, House Bill (HB) 2253 (Attachment B), was enacted in the 2013 legislative session (key provisions of the new law are now codified at ORS 195.033-195.037).

The legislation substantially changed the method for population forecasting for land use purposes in Oregon. It repealed former statutes on this topic that had required counties to adopt forecasts, and instead required the Population Research Center at Portland State University (PRC or the center) to prepare and issue population forecasts for all cities (UGBs) and counties, except Metro, on a four-year schedule. The new laws establish that, once they are issued, these forecasts shall be used by local governments as the basis for land use planning (the PRC forecasts do not apply to Metro or local governments in the Metro area). Furthermore, the forecasts are not appealable to LUBA or the courts as "land use decisions," although there is a process for appeal of a proposed forecast to PRC before it is made final – in such an appeal PRC is authorized to resolve the appeal and issue a final (un-appealable) forecast.

For purposes of this agenda item, HB 2253 states that:

> *Section 2(10): The Land Conservation and Development Commission [LCDC], in consultation with the State Board of Higher Education [PRC], shall adopt rules to implement the population forecasting program required by this section.*

Since this new forecasting process is substantially different than the old process, the existing LCDC rules on population forecasting must be repealed and/or modified. In addition, the existing rules are based on, and implement, statutes that were repealed by HB 2253. The existing

rules for forecasting should remain applicable to the Metro area (since HB 2253 does not apply to Metro), but they must be modified so as to apply only to Metro and Metro cities, rather than (currently) to all cities, counties and Metro.

HB 2253 also required the adoption of new rules by PRC, for use by the center in order to provide the procedures and schedule for population forecasting statewide except Metro. PRC adopted these new rules July of 2014 (Attachments E and F).

With respect to LCDC, HB 2253 indicates that the commission must adopt new rules regarding forecasting that will regulate:

- The transition between previous laws and rules on forecasting, and
- The use (by local governments, agencies and districts) of the new forecasts issued by PRC.

In effect, this means that LCDC must either repeal or substantial modify pre-existing LCDC population rules at OAR 660-024-0030. The department is recommending that the commission repeal the current population forecasting rule in division 24 and adopt a new division of rules, **Division 32,** consisting of rules pertaining to population forecasting (Attach. B). Some additional modification of a UGB related rule in division 24, OAR 660-024-0040, is necessary to reference the proposed new rule division for the particular requirements of that rule (Attach. C).

We note that HB 2253 indicated that the PRC must adopt its rules "in consultation with the department" to carry out the new forecasting program. In turn, the law requires LCDC, in consultation with the State Board of Higher Education (i.e., with the PRC), to adopt rules to implement the population forecasting program. As the primary method to ensure such coordination, both the director and a key staff member from the PRC were appointed to serve on the RAC (Jason Jurjevich and Risa Proehl). The department served as a member of PRC's advisory committee when that agency considered its new forecasting rules.

III. RULE ADVISORY COMMITTEE

In March of 2014 the commission appointed a rule advisory committee (RAC) to help the department draft and recommend rules. The RAC is chaired by former LCDC Chair Marilyn Worrix, and consists primarily of the same members of the RAC that had been previously appointed by PRC to develop PRC's rules regarding process and scheduled for implementation of HB 2253. Many members of this RAC had also served on the joint work group that originally developed the legislation (HB 2253).

The RAC consisted of:

1. Marilyn Worrix, Chair
2. Jason Jurjevich, Portland State University Population Research Center
3. Risa Proehl, Portland State University Population Research Center
4. Dennis Yee, Metro
5. Simon Skiles, Confederated Tribes of Siletz Indians

6. Erin Doyle, League of Oregon Cities
7. Mia Nelson, 1000 Friends of Oregon
8. Mark Nystrom, Association of Oregon Counties
9. Brandon Reich, Marion County
10. Damian Syrnyk, Oregon Planning Association and City of Bend
11. Jon Chandler, Oregon Home Builders Association
12. Peggy Lynch, League of Women Voters

The RAC met four times beginning in June 2014 and at its last meeting January 5, 2015, it reached substantial consensus on the recommended rules in Attachment A, except as noted in comments provided in Attachment H.

IV. OUTLINE OF NEW POPULATION FORECASTING PROGRAM

HB 2253 (2013) established a new process for population forecasting for land use purposes. Briefly, the legislation requires (and provides funding for) population forecasts for land use purposes, issued on a regular basis by the Population Research Center (PRC) at Portland State University (PSU) (attachment F to this report is PRC's summary of this process). Further details of the legislation are as follows:

- New forecasts must be issued for cities and counties every four years (which PRC suggests will probably change to every 3 years after the first cycle).
- LCDC rules must provide a process to transition from the current forecasting system to the new one.
- Forecasts would be fully funded by state grant resources that are provided to DLCD and distributed to PRC by the department.
- Such forecasts are NOT considered to be a land use decision, and thus would not be appealable to LUBA.

The following are the main elements of the new forecast program, as required in HB 2253:

- The Population Research Center (PRC) must adopt rules to establish a process to issue population forecasts on a regular basis for the entire state (completed June 2014, see Attachment E).
- The "first round" of forecasts must be completed over a 4 year period following enactment of the legislation. After that, forecasts will be issued for approximately 1/4th of the state every year. (However, the first year of the first cycle, beginning in 2014, was for PRC to get the process up and running - under PRC rules the forecasts will be actually issued on a three-year cycle starting in 2015. From then on, that 3-year cycle will likely continue, so roughly 1/3rd of the state will get a new forecast every three years).
- PRC must establish an in-depth process to gather information about local circumstances prior to issuance of forecasts and must provide multiple opportunities for input from cities, counties, special districts and citizens before the forecast is issued.

- After issuance of the proposed forecast (about March of each year of the cycle), PRC must provide a 30-60 day "challenge process" for local governments and citizens who do not agree with the forecast. PRC is the decider in such a challenge. The final forecast is issued in June of each cycle.
- Provide at least the following phase-in options for cities and counties to choose from:
    - A local government may use the initial, "first round" PRC forecast as soon as it is issued and finalized;
    - If there is an acknowledged forecast, a local government may use it for land use purposes until a "first round" forecast is finalized by PRC;
    - If a city has initiated a land use task (either filed a 35-day notice for a PAPA or are engaged in a periodic review work task), it may continue to use the current acknowledged forecast or may instead use the PRC forecast for the duration of the work.
- PRC forecasts are for a 50 year forecast horizon, with 5 year increments, but single year forecasts for at least the first decade. PRC provides an "interpolation table" for increments between the five year intervals.
- Metro retains responsibility for city/county forecasts within Metro boundary, including all cities in that boundary, but must coordinate its forecast with PRC. Forecasts for those cities and portions of counties in Multnomah/Clackamas/Washington County outside the Metro boundary will be provided by PRC.
- A Review Team comprised of experts in the field, and city and county representatives, <u>may</u> be established by LCDC, at its discretion, to review the forecasting methodology and provide peer review to the PRC.
- Cities with a shared UGB and/or shared county boundaries will be forecasted by PRC together in the same "round" of forecasts.

V. <u>PROPOSED NEW AND AMENDED RULES</u>

The proposed new rules in Attachment A were drafted by the department with the advice of the RAC. The attached proposal is actually draft 5 of a series of proposals presented to the RAC. The department believes there is consensus among RAC members on the concepts in the attached draft proposed rules, although the wording of this draft was not completed until after the RAC's final meeting and as such comments provided will indicate further discussion after the final RAC meeting.

This report, below, provides an explanation for each of the proposed new rules, and the major sections within each rule, and also provides an explanation of the proposed repeal and amendment of current related to population forecasting.

A. Repeal and amendment of previous population forecasting rules.

The proposed rule amendments consist of a repeal of current population forecasting rules at OAR 660-024-0030, and amended citations in current UGB rules, at OAR 660-024-0040 in order to cite to the new rules rather than the repealed rules. As described below, the new rules refer to multiple forecasts for various situations. That is, either the new PRC forecast when it is issued, or a set of possible forecasts for use in the interim until PRC forecasts are issued, depending on the situation. As such, the amended references in OAR 660-024-0040 refer to "the appropriate forecast," meaning either the new PRC forecast or an interim forecast, depending on the time that the local government takes an action (UGB amendment) that requires application of OAR 660-024-0040.

There may be other rules that need to be amended in a similar way as OAR 660-024-0040. The department believes references to the new division 32 should be added to rules in the following divisions: OAR 660, div. 12 (the TPR), OAR 660, OAR 660, div 22 (Rural Communities), and OAR 660, div. 42 (Scenario Planning).

The department did not identify these rules prior to issuing formal rule notices in December 2014 (See Attachment C), and as such, amendments to such rules cannot be considered at this LCDC meeting. However, preliminarily, the department believes that LCDC consideration of such corrections may not be necessary and that the department may make these corrections without a public hearing. Statutes regarding agency rule notice at ORS 183.335(7) provide that,

> *"… Notwithstanding notice requirements for rule amendments … an agency may amend a rule without prior notice or hearing if the amendment is solely for the purpose of … correcting statutory or rule references.…".*

The department will consult with legal counsel to determine whether this authorization is sufficient to allow changes to the other rule divisions mentioned above, in order to correct references. While the proposed amendments would indeed be solely for the purpose of correcting citations, the wording of citation references with respect to the new population rules is not necessarily "simple," as may be seen for example by the type of citation corrections in Attachment A for OAR 660-024-0040. If it is determined that a further hearing is necessary to correct these references, the department will schedule that item for a future LCDC meeting.

B. OAR 660-032-0000 regarding Purpose and Applicability

This proposed new rule declares that the rules in the proposed new division will provide standards and procedures to implement the new statutes enacted by HB 2253 (ORS 195.033 to 195.036) regarding population forecasting, and will also implement statewide planning Goals regarding population forecasts for land use planning purposes.

While there are only two planning goals that actually mention population forecasts – Goals 2 and 14 – population forecasts are important to planning related to several other goals including Goal 9, 10, 11 and 12. Goal 2 is generally recognized as the primary planning goal that requires

population forecasts to be part of the comprehensive plan. While that goal does not actually mention population forecasts in the body of the goal, they are clearly one of the intents of the general requirements and they are mentioned in the guidelines section of the goal. Throughout the history of Oregon's land use program, Goal 2 has been cited as the goal that requires population forecasts as a basis for comprehensive planning. The overarching requirement of Goal 2 is that local comprehensive plans must serve as the basis for all local decision and actions related to use of land and must provide an adequate factual base for such decisions and actions. The guidelines section adopted with Goal 2 indicates that "*the factual base of a plan … should include data on … Population and economic characteristics of the area*."

Goal 14 directly refers to population forecasts, requiring that "*establishment and change of urban growth boundaries shall be based on … demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments.*" For this reason, UGB rules at OAR 660, division 24, rules to implement Goal 14, provided detailed requirements for population forecasts. However, as per the recommendation of the RAC, these requirements would be repealed to be replaced by the proposed new division 32.

C. Definitions for Purposes of the New Division (Rule 0010).

This proposed new rule provides definitions of terms used in the various other proposed rules throughout the new division. Reflecting the general practice for rule divisions, there is, first, a general statement that the formal statutory definitions of common land use terms used in key land use statutes – ORS 195 through ORS 197 – apply. Those definitions are codified at ORS 197.015, a section which states that the definitions here are for purposes of ORS 195 through ORS 197. Note that two definitions from that statute have been repeated in this rule; the definitions for "Local Government" (see proposed section (4)) and "Special District" (see proposed section (7)). Since these are both very important terms in this division, it is good practice to repeat them here for easy reference, rather than simply refer to the ORS statutes and require people to look them up.

Moreover, for both these terms, the proposed definition is not exactly as it is in statute. Instead, as worded in the draft, the department has removed reference to one key term in the statute definition: "an association of local governments performing land use planning functions under ORS 195.025." There was discussion in the RAC about this provision, to the effect that none of these were ever established and none could ever be established in the future since the supporting federal provisions expired in the early 1980's. Since the RAC recommended editing these terms, the department's draft reflects the group's consensus. The department will defer to legal counsel as to whether this type of modification is authorized by law. It will not make any difference in practice, regardless of which definition we use, the exact one from statute or the modified one proposed here.

There is one point of potential confusion regarding the definition of local government. HB 2253 includes a definition of "affected local government" for purposes of that law. The department does not believe that definition was intended (i.e., by Legislative Counsel, in drafting HB 2253) to mean the same as the term "local government," or to be a

replacement of the statutory definition for "local government" in ORS 197.015. This is important because, for example, "affected local governments" in HB 2253 includes special districts, but the definition of "local government" in ORS 197.015 does not. The department believes these were intended by legislative counsel, in drafting HB 2253, to be different terms, each with a separate meaning. We note that the RAC did not have unanimous consensus on this interpretation.

DLCD believes the definition of "affected local government" in HB 2253 was provided for the purpose of requirements (in that law) concerning notice and appeals of PRC forecasts, and as such it applies only to (and is included in) rules that PRC adopts about its forecast process. It is not a term that needs to be used in the proposed LCDC rules in this report, and thus is not a defined term in the rule proposal.

In fact, there was quite a bit of discussion in the meetings that led to the proposal of HB 2253 about which groups would receive notice and could appeal. The conclusion was that districts are among those entities who receive notice from PRC about pending forecasts, along with other entities mentioned in the "affected local government" definition. As such they also have the opportunity to appeal preliminary forecasts to PRC. There was no discussion in the hearings on HB 2253 in 2013 as to having that definition <u>replace</u> the more general definition of "local government," a term that is also used in HB 2253. This is important, as discussed in Section D of this report, below.

It should also be noted that the department is using the definition of "special district" that is contained in ORS 197.015, applicable to ORS 195. There are other definitions of special district in other laws, but since HB 2253 was intended to be codified in ORS 195, that definition is the proper one.

Finally, the definition of "Initiates" is important to proposed rules under 0040, discussed in Section F of this report, below. This definition is modeled closely on that one in the current division 24 UGB rules at OAR 660-024-0000, but is not identical. The department believes that the provisions of HB 2253 that concern interim forecasts were drafted based on the usage in division 24, and that therefore the proposed definition here provides the intended meaning.

<u>D. General Rules Regarding Population Forecasts for Land Use Planning (Rule 0020)</u>

These proposed rules implement and reflect a core mandate of HB 2253, which requires that the PRC forecasts will generally be THE forecasts for land use planning purposes. The proposed rule restates this law, but provides more detail as well.

Proposed Section (1) establishes that a local government with land use jurisdiction over land that is outside the Metro boundary shall apply the final forecast issued by the Portland State University Population Research Center (PRC) when changing a comprehensive plan or land use regulation that concerns such land, when the change is based on or requires the use of a population forecast, except that a local government may

apply an interim forecast as provided in OAR 660-032-0040, discussed below. This wording repeats wording in HB 2253, but adds the phrase "when the change is based on or requires the use of a population forecast," at the request of the RAC. It was believed this additional clarification was necessary so as not to imply that forecasts must be used in all instances when a plan is amended, but rather than only when such change requires use of a population forecast.

Proposed Section (2) establishes that Metro, or a city or county within the Metro boundary, must use Metro's population forecast when changing a regional framework plan, comprehensive plan or land use regulation, when the change is based on or requires the use of a population forecast. This has long been understood to be current law (applicable to all jurisdictions including Metro) and as such is simply a restatement of current law in order to bring it into this new rule division and have it pertain only to Metro.

Section (3) is proposed in order to ensure that state agencies and special districts perform their land use planning related work, or take other land use actions, in accordance with the PRC forecasts once they are issued. It is interesting to note that HB 2253 did not require agencies and special districts to directly "apply" the PRC forecasts in the manner of cities, counties and Metro must, as provided in Section 1 and 2, described above. However, it has long been the law (clearly stated in Statewide Planning Goal 2) that agencies and special districts must perform planning or take other land use actions consistent with the local comprehensive plan.

One problem addressed by this proposal is as follows: the RAC has agreed that, since the PRC forecasts automatically apply to cities and counties, it is not necessary to require that each local government amend its plan as the PRC forecast is issued. This is in part an attempt to avoid a significant amount of unnecessary "process" when, in fact, the forecasts automatically apply under law. The formal plan amendment process can be lengthy and costly, and it might be necessary to develop rules in the event that a local government failed to adopt the forecast. The automatic applicability solves this, but a problem arises in that there would not necessarily be a forecast "in the plan" at such time as a district or agency adopts a plan or takes a land use related action. As such, it would not be clear whether an agency or special district action is consistent with the plan when that action requires use of a forecast. Therefore, this section simply "deems" the PRC forecast to be in the plan after it is issued, even if the local government has not amended the plan to include the forecast.

To summarize, the proposed section (3) of the draft rule would require that, when a state agency or special district adopts or amends a plan or takes an action which, under Statewide Planning Goal 2 or other law, must be consistent with the comprehensive plan or regional framework plan of a local government, and which is based on or requires the use of a population forecast, and if the local government has not adopted the most recent PRC final forecast as part of the plan, the most recent PRC final forecast shall be

considered to be the long range forecast in the comprehensive plan or regional framework plan, except as provided in OAR 660-032-0040.[1]

E. Proposed Rule Regarding Metro Area Population Forecasts (0030)

The proposed rules regarding forecasting for Metro require that Metro, in coordination with local governments within its boundary, "shall issue a coordinated population forecast for the entire area within its boundary, to be applied by Metro and local governments within the boundary as the basis for a change to a regional framework plan, comprehensive plan or land use regulation when such change must be based on or requires the use of a population forecast." This is not a change in current law, but simply brings that law into this proposed new rule division.

In section (2), the draft proposes that Metro "shall allocate the forecast to the cities and portions of counties within the Metro boundary for land use planning purposes." Again, this is the current and longstanding practice, but has not been previously cited in a rule. The department, and with concurrence by the RAC, believes this is necessary because cities within Metro need to amend plans and conduct periodic reviews using a population forecast as a basis. This proposed rule would reflect past practice of using the Metro-allocated forecast for such planning.

The proposed sections (3) through (5) simply move provisions in the "old" population rules in division 24 that applied to all jurisdictions, including Metro, into this new rule. The div 24 provisions are proposed for repeal (see Attachment B), in part because they no longer apply to most cities and counties statewide (instead PRC will forecast population). But these requirements should not be repealed for Metro area jurisdictions, because they will not be subject to a PRC forecast.

F. Proposed Rule Regarding Interim Forecasts (0040)

A significant amount of discussion in the RAC concerned the rules for transitioning from the former process to the new process. PRC will issue forecasts for all cities and counties in the state (outside of Metro) on a schedule adopted by rule, illustrated in Attachment F. This means that one third of the state will be issued final forecasts in June of 2015, another third in June of 2016, and the final third on June of 2017. As a result, there is an "interim" period between the proposed adoption of these rules and the issuance of a PRC forecast, sometimes up to at least 2 ½ years, and this requires a set of "transition rules" or else we would prevent such planning by jurisdictions. The interim rules are proposed by

[1] Goal 2 requires that state agency and special district "plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans." The goal defines "Plans" to "encompass all plans which guide land-use decisions, including both comprehensive and single-purpose plans of cities, counties, state and federal agencies and special districts." Goal 2 requires that all plans must be "coordinated with the plans of affected governmental units," which are defined in the goal to include "agencies and special districts which have programs, land ownerships, or responsibilities within the area included in the plan."

the department at 0040 of the new division in Attachment A. There is no need for transition rules for Metro jurisdictions, since there is a current forecast that is applicable and, although rules in this proposed division (0030) address Metro jurisdictions, they are fundamentally the same rules as have applied in the past.

In general, the proposed "transition rules" in Attachment A provide that, until cities and counties receive a forecast from PRC, they may rely on either their acknowledged forecasts for any planning work that requires a forecast, or if they have no forecast or their forecast is more than ten years old, they may create an "interim forecast" following the proposed rules in sections (4) through (6), based on the most recent forecasts issued by the Office of Economic Analysis (Attachment G).

Creating and agreeing on this interim process has involved a substantial amount of discussion time and effort by the RAC, in part because there are several different scenarios or types of "interim" circumstances to consider, and in part because each of the proposed methods for dealing with these various scenarios are themselves very complex, or appear very complex when it comes to drafting a rule that adequately describes them. It is indeed unfortunate that the RAC needed to spend such a large proportion of its time in conceptualizing, achieving consensus, and drafting this interim rule, since it will only apply for a relatively brief period of time and to relatively few jurisdictions. Nevertheless, we anticipate that discussion of this interim rule will likely involve a substantial amount of time in the commission's hearing, either due to the complexities of the "presentation" necessary to describe the rule, but also due to continuing discussion among various parties since the draft rules were published. Furthermore, some of the "details" of the proposed draft were not drafted with enough precision in a couple of places, and as such there will be an amended draft prior to or at the hearing to make some corrections.

As introduction, there are two subsections in HB 2253 that provide clear authority, and indeed a mandate, for LCDC rulemaking regarding this transition. One of these subsections is more general, and indicates:

> *HB 2253 Section 3(3)(b) "The Land Conservation and Development Commission shall adopt rules to regulate the transition from the application of population forecasts produced under ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act, to the application of population forecasts produced under … this 2013 Act ..."*

It is the department's interpretation that this represents a broad grant of authority to LCDC to craft procedures and requirements related to the transition between the old and the new forecasting program. Because it is broad, the commission has leeway to adjust these provisions and to determine the method. A second provision of HB 2253 is narrower (and sequentially precedes the general provision above). It states:

> *HB 2253 Section 3(3)(a) "A local government for which the center is to issue population forecasts under section 2 (2) of this 2013 Act that initiates a periodic*

> *review, or any other legislative review of its comprehensive plan that concerns the urban growth boundary, on or before the date the center issues a final population forecast for the urban growth boundary may continue its review under a population forecast that satisfies the requirements of ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act.*

The department interprets this as requiring that, at a minimum, the commission's rules must allow the transition for planning that concerns UGBs, as described above. However, due to the first provision described above, the department believes the commission has the discretion to authorize a transition for other purposes as well, not only UGB planning, due to the broader discretion provided in the first section described above.

In discussion with the RAC, it was agreed that there might indeed be some purposes in addition to UGB related planning for which the rules should authorize local governments, especially counties, to proceed using an interim forecast rather than wait for the PRC forecast issued under the schedule established by PRC. The RAC agreed these purposes should include transportation plans or other public facility plans done by counties for the entire county (and as such, not necessarily "related to URB planning").

Section (1) establishes that a local government may use an interim forecast provided it was acknowledged, if the local government "initiates," prior to PRC issuance of a forecast, either a periodic review or legislative review of its comprehensive plan that concerns an urban growth boundary, or that concerns a different matter listed in proposed *section (2)* of the rule. Note that the definition of "initiates" is important here; that definition is in the definition section previously described.

Under the proposal, if a local government gives notice, or has previously given notice of an authorized planning task, the local government may continue considering that plan task using either

a) The population forecast that was acknowledged before the review was initiated, provided the forecast was adopted by the local government not more than 10 years before the date of initiation, and was "acknowledged" prior to the effective date of the proposed rule (it would be effective upon filing after LCDC adoption), or

b) A new forecast for purposes of the interim planning task, provided the forecast is developed in accordance with requirements of sections (4) through (7) of the proposed rule.

Section (2) lists the various "topics" for which the rule would allow "transitional" use of an older forecast (or a new forecast if the previous one is more than 10 years old or if none has previously been developed). These topics are in addition to the expressly authorized (in HB 2253) of a "periodic review or other legislative review of the comprehensive plan that concerns an urban growth boundary review or amendment." The other areas are proposed to be: an economic development plan, housing needs, public facilities; or

transportation plan. When such plans are city initiated, for areas inside UGBs, the department is confident such interim planning is already allowed within the framework of "an urban growth boundary review or amendment," so this list is probably not necessary. But when such plans are for areas of a county outside a UGB, they would not generally be considered UGB related, and thus the draft rule would provide this authorization to use interim forecasts. Again, such authorization would go beyond that provided by the express provisions in *Section* 3(3)(a) of HB 2253, but are, in the opinion of the department, within the commission's authority due to the broader provision described Section 3(3)(b) above).

Section (3) This proposal is simply to ensure that, if the previous (now "interim") forecast was adopted by the applicable county and allocated population forecasts to each of the urban areas in the county, but was not in turn adopted by a particular city in that county, the city may nevertheless apply the allocated forecast as necessary for a planning task related to UGB planning or that is on the Section 2 list.

Section (4) provides that if a forecast has been adopted previously (and acknowledged prior to the effective date of the rule), but does not provide a forecast for the applicable planning period (e.g., 20 years), the local government may extend the forecast for such purpose. This section provides that, in order to extend the forecast, the local government would use the long term growth trend that was assumed in the adopted forecast to the current population of the planning area. In other words, the local government would multiply the current population of the planning area (determined as per Section (7)) by the growth rate that was assumed in the adopted forecast.

Section (5) provides that, if either there is no current adopted forecast (that meets the requirements of sections (1) (a) and (1) (b)), or if the adopted forecast is more than ten years old, the local government may adopt an interim forecast for purposes described in section (2) of the rule. The interim forecast must be determined based on the average annual (annualized) growth rate for the planning period provided in the most recent population forecast for the county issued by the Oregon Office of Economic Analysis (OEA). Proposed section (6) of this rule provides more detail as to how this is done. Section (5) also requires that the local government adopt the interim forecast as a PAPA, using the procedures and requirements in ORS 197.610 to 197.650, and shall provide notice to all local governments in the county.

Section (6) provides that the interim forecast described in section (5), above, must be developed by applying the annualized growth rate determined in the most recent OEA forecasts for the planning area. Since the OEA rates are for five year increments, the local government must use the rate for "the nearest applicable planning period" published in the most recent OEA forecast. As in Section (4), "applying" the trend is done by multiplying the rate shown in the OEA forecast by the "current population of the planning area" determined in accordance with proposed section (7).

Section (7) proposes definitions to help with the calculations provided in sections (4) through (6).

Again, the department believes that the wording in 0040 has a few glitches and needs adjustment. Some of these are described in comments provided in advance, and others have not been picked up by others but nevertheless the department believes they are necessary. They will be provided in a supplemental report issued after this report.

VI. DEPARTMENT RECOMMENDATION

The department recommends that the commission receive testimony on the proposed rules provided in Attachment A of this report, and on the repeal and amendment of current rules provided in Attachment B of this report. Following the close of the hearing, the department recommends that the commission adopt the proposed new population forecast rules in Attachment A, and repeal current rules, and amend provision of current rules to reference the new rules, as proposed in Attachment B.

VII. ATTACHMENTS

A. Proposed New Population Forecasting Rules
http://www.oregon.gov/LCD/docs/rulemaking/Population/DRAFT_660-032_PopulationForecast_2015-01-09.pdf

B. Proposed Repeal and Amendment of Existing Rules
http://www.oregon.gov/LCD/docs/rulemaking/Population/DRAFT_660-032_PopulationForecastEdit_2015-01-09.pdf

C. Notices of Proposed Rulemaking
http://www.oregon.gov/LCD/docs/rulemaking/2013-15/660-20141215Notice.pdf
http://www.oregon.gov/LCD/docs/rulemaking/2013-15/660-20141215Fiscal.pdf
http://www.oregon.gov/LCD/docs/rulemaking/2013-15/660-032_HIS.pdf

D. HB 2253 (enacted in 2013)
https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureDocument/HB2253

E. PSU Population Forecast Center Rules http://www.pdx.edu/prc/opfp-rulemaking

F. PSU Description of Forecasting Methodology (attached pdf) and
Related Maps http://www.pdx.edu/prc/sites/www.pdx.edu.prc/files/Final%20Map.pdf

G. 2013 OEA forecasts
http://www.oregon.gov/DAS/OEA/docs/demographic/County_forecast_March_2013.xls

H. Comments Received prior to mail-out of this report

Item 3
Attachment H

January 15, 2015

Land Conservation and Development Commission
C/o Casaria Taylor, Rules Coordinator, Casaria.taylor@state.or.us
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

GROWTH MANAGEMENT
709 NW WALL STREET
PO BOX 431
BEND, OR 97701
[541] 388-5505 TEL
[541] 385-6676 FAX
BENDOREGON.GOV

JIM CLINTON
Mayor

SALLY RUSSELL
Mayor Pro Tem

VICTOR CHUDOWSKY
City Councilor

DOUG KNIGHT
City Councilor

NATHAN BODDIE
City Councilor

CASEY ROATS
City Councilor

BARB CAMPBELL
City Councilor

ERIC KING
City Manager

Re: January 22, 2015 public hearing on proposed rules for population forecasts (OAR 660-032)

Dear Chair Macpherson and Members of the Commission:

This letter provides testimony in support of adopting a proposed new rule, OAR 660-032, related to the use of population forecasts prepared by the Population Research Center (PRC) at Portland State University. This letter further recommends that the Commission do so after considering any public testimony provided to you.

For context, I participated with a working group that began looking at this concept in 2011, and provided testimony in support of the original legislation (HB 2253) in 2013. I also participated as a member of the rules advisory committees (RACs) for both the PRC and the Department in 2013 and 2014 respectively. The process to develop these rules has been thorough and collaborative. The Department staff and the members of the RAC have done an excellent job developing the final rule to implement this new program.

Thank you for considering this testimony. Please adopt the new rule only after considering any public testimony submitted at or before the hearing. As a member of the RAC, I make point to ensure this new population forecasting program works and helps cities and counties with long range planning.

Sincerely,

Damian Syrnyk, AICP
Senior Planner

Abbott, Amie

From: Mia Nelson <mia@friends.org>
Sent: Friday, January 9, 2015 8:40 AM
To: Rindy, Bob
Cc: MacLaren, Carrie; Worrix, Marilyn; Taylor, Casaria; Howard, Gordon
Subject: Re: Draft 5 population rules

All,

Thanks for this - it looks good. I do have the one lingering concern about special districts - recall I asked at the meeting, if anyone knew for sure that special district master plans were always subject to the requirement of consistency with the goals/local plans. Have any of you looked into that?

Mia

Mia Nelson
Willamette Valley Advocate
1000 Friends of Oregon
P.O. Box 51252
Eugene, OR 97405
(541) 520-3763

On Jan 8, 2015, at 4:57 PM, Rindy, Bob wrote:

RAC, here is a new draft 5 based on our meeting last Monday. There were many points big and small discussed in the meeting and the discussion was quite complex. I have tried my best to capture all of those points here, but if necessary of course we will continue to adjust the draft.

LCDC will hold a public hearing on January 22 (meeting starts at 8:30) as per the attached agenda. As we agreed, written comments (including comments by mail, fax or email) will be accepted until the hearing is done. But comments received by the department by 5:00 PM January 13 will be included in the packet provided to the LCDC for their review prior to the hearing. Further, we will try and synthesize comments you provide us on particular issues so we can help the commission make needed adjustments, possibly with a supplemental "hand carry" report.

Thanks again for all the time and effort you have provided to this and please feel free to call with questions.

Bob Rindy | Senior Policy Analyst
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Office: (503) 934-0008| Cell: (503) 881-0433
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<Draft 5 LCDC Population Rules Jan 8.docx><Agenda_LCDC_Jan_2015.docx>

City of
Grants Pass

January 14, 2015

Land Conservation and Development Commission
c/o Casaria Taylor, Rules Coordinator, casaria.taylor@state.or.us
635 Capitol Street, Suite 150
Salem, OR 97301

RE: Proposed Rulemaking for OAR 660, Division 32 for Population Forecasts

Dear Chair Macpherson and Members of the Commission:

This letter is submitted to provide comments regarding the January 9, 2015 draft Population Forecast Administrative Rule OAR 660, Division 32, scheduled for hearing at the Commission's hearing in Portland on January 22 and 23, 2015. Specifically, these comments pertain to the provisions proposed for interim forecasts.

Excerpt from Statute to Be Implemented

NOTE: Subsection 3 of Section 3, chapter 574, Oregon Laws 2013, provides:

(3) Notwithstanding the amendments to ORS 195.036 by section 4 of this 2013 Act and the repeal of ORS 195.034 by section 7 of this 2013 Act:

(a) A local government for which the center is to issue population forecasts under section 2 (2) of this 2013 Act that initiates a periodic review, or any other legislative review of its comprehensive plan that concerns the urban growth boundary, on or before the date the center issues a final population forecast for the urban growth boundary may continue its review under a population forecast that satisfies the requirements of ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act.

(b) The Land Conservation and Development Commission shall adopt rules to regulate the transition from the application of population forecasts produced under ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act, to the application of population forecasts produced under section 2 of this 2013 Act and ORS 195.036, as amended by section 4 of this 2013 Act. [2013 c.574 §3]

Concerns with Proposed Rule

A population forecast is a legislative review of the comprehensive plan that concerns an urban growth boundary. The statute above specifies that a local government that **initiates** a review **on or before the date the center issues a final population forecast** for the urban growth boundary **may continue its review under a population forecast that satisfies the requirements of ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act.**

The proposed rule is inconsistent with the statute in the following ways:

Procedural Issues

- A population forecast submitted to DLCD 'in the manner of periodic review' is a legislative review of the comprehensive plan that concerns an urban growth boundary. The statute specifies that the local government must **initiate** a review **on or before the date the PRC issues the final forecast.**

  The proposed rule would change the requirement so that initiating a legislative review would no longer be sufficient. It would treat a population forecast differently than other legislative review items. In addition, the proposed rule would no longer allow for concurrent submittal of a population forecast and other legislative work tasks. It would require that a forecast must have been **acknowledged** before the legislative review was **initiated**.

  Further, it would change the cut-off date from **the date the center issues a final population forecast** to **the effective date of the rule**.

Substantive Issues

- The statute specifies that the local government **may continue its review under a population forecast that satisfies the requirements of ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act.**

  The proposed rule would impose new substantive requirements for interim population forecasts that differ from **the requirements of ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act.** Sections 660-032-0040(5) and (6) of the proposed rule introduce new substantive requirements that were not part of ORS 195.034 and 195.036 as those sections were in effect immediately before the effective date of the act.

  Further, these **new substantive requirements in the rule** are for interim forecasts which must be **acknowledged prior to the effective date of the rule**. The only way to comply with these requirements is if a local government already happened to use the specified methodology prior to the effective date of the rule. There is no way to prepare an interim forecast based on provisions in the rule if the forecast must be acknowledged by the effective date of the rule.

- Section 660-032-0040(1)(a) implies that a forecast adopted up to 10 years before the initiation of the legislative review could be used as an interim forecast. However, the reality is that a forecast would need to have been prepared in 2013 or later in order to comply with the provisions of 660-032-0040(5) and (6), which require the interim forecast to use the growth rates from the most recent OEA forecast, which was issued in 2013 (draft issued in January, final issued in March).

- Subsections 660-032-0040(5) and (6) would require the 'local government' to use the average annual growth rate provided in the most recent forecast for the county issued by

OEA for 'the planning area'. This is either unclear or flawed. The OEA forecast only provides county-level forecasts and growth rates. If the rule requires the county and smaller geographic areas within the county (such as the UGBs of cities) to use the county average annual growth rate in the OEA forecast, this methodology is flawed. County-level growth rates can't simply be applied to cities and county sub-areas. The same increment of growth relative to a smaller total population will produce a higher growth rate. For example, 1 person added to 10 people is 10% of the base population, whereas 1 person added to 100 people is a 1% of the base population. If all of the growth in a county of 100 people occurred in a city of 10 people, and the total growth was that 1 person, the county growth rate would be a much lower rate than the city growth rate. It would be inappropriate to use the county's growth rate as the city's growth rate.

Recommendations

- Revise the proposed rule so local governments can **initiate** a change to the coordinated population forecast, including one that will be submitted to DLCD 'in the manner of periodic review', like any other legislative review of a comprehensive plan, **prior to issuance of the final forecast by PSU**, consistent with the statute. Initiating a legislative review typically begins well before a notice of proposed amendment is even submitted to DLCD.

- Do not require that above interim forecast must be **acknowledged** prior to **initiation** of other legislation review items.

- Delete the substantive provisions of 660-032-0040 (5) and (6) so the rule is consistent with the statutory requirements that specify the forecast need only meet **the requirements of ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act**.

Conclusions

The proposed rule creates new procedural and substantive provisions that apply retroactively. The proposed rule includes provisions which are in conflict with the statute the rules are intended to implement. Even work tasks that have already been adopted and submitted to DLCD 'in the manner of periodic review' as part of a legislative review could be retroactively affected by this rule even though the rule may have been enacted **after** the adoption and submittal if DLCD hasn't yet reviewed and acknowledged those work products prior to the effective date of the rule. This creates a 'moving goalpost', paradoxically creating new requirements in the rule for interim forecasts that would have to be acknowledged before the effective date of the rule.

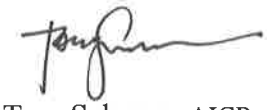
If local governments have provided notice of a proposed amendment for a coordinated population forecast (and other legislative work based on an adopted forecast that is consistent with the requirements of the above statutory language), held hearings, adopted a coordinated forecast, and even sent notice of the adopted amendment to DLCD, ***if DLCD has not completed its review and acknowledgment*** prior to the effective date of the new rule, then an adopted forecast that complies with statute but not the new rule cannot be relied on as an interim forecast due to the new provisions of this new rule, which are not in the statute.

We strongly urge DLCD to revise the draft provisions of OAR 660-032-0040 pertaining to this transition to more closely match the statutory provisions above prior to the Commission's review. *At a minimum, a more appropriate phase-in of the rule would specify that local governments need only have submitted to DLCD the notice of proposed amendment for a coordinated population forecast before the Population Research Center issues the final forecast.* In reality, 'initiating' a legislative review begins much earlier than filing a notice of proposed amendment with DLCD. For those local governments in formal periodic review, initiating the work plan phase may be more appropriately considered 'initiating the legislative review'. Similar consideration should be given to communities undertaking a legislative review 'in the manner of periodic review'.

This is simply the same type of fairness provided in the local land use process that specifies the laws and rules which apply are those in effect at the time of application, not at the time of final decision.

We respectfully request that the Commission postpone adoption of the proposed rule and consider a draft which incorporates provisions to address the above recommendations prior to adoption, with adequate opportunity for review and comment.

Sincerely,



Tom Schauer, AICP
Senior Planner

cc: Jim Rue, Director, DLCD
Bob Rindy, Senior Policy Analyst, DLCD
Josh LeBombard, Southern Oregon Regional Representative, DLCD
Lora Glover, City of Grants Pass Parks & Community Development Director
Mark Bartholomew, City of Grants Pass City Attorney
Dennis Lewis, Josephine County Planning Director
Ryan Nolan, City of Cave Junction City Recorder
Jason Jurjevich, PSU Population Research Center Assistant Director
Risa Proehl, PSU Population Research Center Demographic Analyst
Erin Doyle, LOC Intergovernmental Relations Associate

Abbott, Amie

From: Brandon Reich <BReich@co.marion.or.us>
Sent: Friday, January 9, 2015 8:11 AM
To: Marilyn Worrix; Rindy, Bob; MacLaren, Carrie
Cc: Taylor, Casaria; Howard, Gordon
Subject: Re: Draft 5 population rules

At this point, I am comfortable with this draft and don't plan on attending the hearing, unless I am directed otherwise. One point I would make is on page 4, section (6) the language says to apply the OEA growth rate to the "planning period." Since OEA growth rates are in 5 year increments, a planning period for a project might not match the OEA period exactly. Would it work as well to say "for the nearest planning period"? I don't feel too strongly about this point; we would work it out on the ground once/if a project gets underway.

Thank you for the opportunity to participate with the committee.

Brandon

>>> "Rindy, Bob" <bob.rindy@state.or.us> 1/8/2015 4:57 PM >>>
RAC, here is a new draft 5 based on our meeting last Monday. There were many points big and small discussed in the meeting and the discussion was quite complex. I have tried my best to capture all of those points here, but if necessary of course we will continue to adjust the draft.

LCDC will hold a public hearing on January 22 (meeting starts at 8:30) as per the attached agenda. As we agreed, written comments (including comments by mail, fax or email) will be accepted until the hearing is done. But comments received by the department by 5:00 PM January 13 will be included in the packet provided to the LCDC for their review prior to the hearing. Further, we will try and synthesize comments you provide us on particular issues so we can help the commission make needed adjustments, possibly with a supplemental "hand carry" report.

Thanks again for all the time and effort you have provided to this and please feel free to call with questions.

Bob Rindy | Senior Policy Analyst
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bob.rindy@state.or.us | www.oregon.gov/LCD

Abbott, Amie

From: Dennis Yee <Dennis.Yee@oregonmetro.gov>
Sent: Monday, January 12, 2015 10:40 AM
To: Rindy, Bob
Cc: Molly Vogt
Subject: RE: Draft 5 population rules

The latest draft 5 looks good to me and Metro attorney (Roger Alfred).

Best,

Dennis

From: Rindy, Bob [mailto:bob.rindy@state.or.us]
Sent: Friday, January 09, 2015 11:47 AM
To: MacLaren, Carrie; 'Worrix, Marilyn'
Cc: Taylor, Casaria; Howard, Gordon
Subject: RE: Draft 5 population rules

RAC, here is the link (also an attachment) to the final version of this draft that we will send to LCDC for their consideration on January 22nd. We did some minor final edits this morning so please use this draft (dated today) rather than the one I sent at 5:00 yesterday in preparing comments to the RAC and the Commission. Given the short time we had to develop this version since last Monday's RAC meeting, it would be unusual if everything turns out to be exactly correct, but I am crossing my fingers that I at least captured all the input at least in concept, and we would welcome comments on additional language adjustments if necessary. I am still working on a staff report to be issued early next week, we will send you a link to that as well.

http://www.oregon.gov/LCD/docs/rulemaking/Population/DRAFT_660-032_PopulationForecast_2015-01-09.pdf

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bob.rindy@state.or.us | www.oregon.gov/LCD

From: Rindy, Bob
Sent: Thursday, January 08, 2015 4:57 PM
To: Worrix, Marilyn; MacLaren, Carrie
Cc: Howard, Gordon; Taylor, Casaria
Subject: Draft 5 population rules

RAC, here is a new draft 5 based on our meeting last Monday. There were many points big and small discussed in the meeting and the discussion was quite complex. I have tried my best to capture all of those points here, but if necessary of course we will continue to adjust the draft.

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bob.rindy@state.or.us | www.oregon.gov/LCD

Abbott, Amie

From: Risa Proehl <proehlr@pdx.edu>
Sent: Monday, January 12, 2015 2:01 PM
To: Rindy, Bob
Cc: MacLaren, Carrie; Worrix, Marilyn; Taylor, Casaria; Howard, Gordon; Jason Jurjevich
Subject: Re: Draft 5 population rules

All,

Regarding 'Interim Forecasts' and growth trends that can be utilized in forecasts that were prepared a long as 10 years ago: For the record, I still advise that a forecast that was prepared prior to Census 2010 data becoming available, and prior to the Great Recession, is outdated. The draft rules instruct local governments to use outdated use growth rates (line 10, page 4) that could have been prepared during the housing bubble, and which I do not recommend. I still recommend that 10 years be changed to 4 years pertaining to the age of the forecast from which the growth rates would be acceptable to use.

Lines 17 and 29, page 4: The annualized growth rate for the 'planning period' is **not** provided and published in the most recent OEA forecast. It has to be calculated. The OEA forecast spreadsheet includes annualized growth rates for the 5 year time intervals, and not planning periods (I calculated the rates for the different possible planning periods on the OEA forecast spreadsheet and sent the file to you following the last RAC meeting).

On line 17, page 4, eliminate the word 'provided', so that the sentence just says the interim forecast for the planning period must be based on the annualized growth rate in the most recent population forecast for the county issued by OEA.

Lines 23-25, page 4: Change to 'The interim forecast described in section (5) for the planning area must be developed by applying the annualized growth rate calculated from 2015 to the nearest 5-year time interval to the end of the applicable planning period.'

PRC will provide the formula to calculate the annual growth rate. It will be posted it to our web site. It will be part of the template we are required to provide.

Risa

Risa S. Proehl
Research Associate and
Population Estimates Program Manager
Population Research Center
Portland State University
Portland, Oregon
tel: 503.725.5103
fax: 503.725.5199

email: proehlr@pdx.edu
Web: www.pdx.edu/prc

On Fri, Jan 9, 2015 at 11:46 AM, Rindy, Bob <bob.rindy@state.or.us> wrote:

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Office: (503) 934-0008| Cell: (503) 881-0433
bob.rindy@state.or.us | www.oregon.gov/LCD

From: Rindy, Bob
Sent: Thursday, January 08, 2015 4:57 PM
To: Worrix, Marilyn; MacLaren, Carrie
Cc: Howard, Gordon; Taylor, Casaria
Subject: Draft 5 population rules

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