



Oregon

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July 16, 2015

TO: Land Conservation and Development Commission

FROM: Sadie Carney, Rural Policy Analyst/Communications Manager

SUBJECT: **Agenda Item 4, July 23-24, 2015, LCDC Meeting**

LCDC POLICY AGENDA

I. AGENDA ITEM SUMMARY

This item is the first of two scheduled opportunities for the Land Conservation and Development Commission (LCDC or commission) to discuss and make decisions about a policy and rulemaking agenda for the 2015-17 biennium. Historically, the commission has approved a policy agenda at the beginning of each biennium, in late summer or early fall, to guide policy work of the Department of Land Conservation and Development (DLCD or department) for the biennium. The department is recommending the commission begin the discussion at the July meeting and reach a final decision on a policy agenda at the September 24-25, 2015, meeting.

“Policy projects” for purposes of this report means efforts that are intended to cause new or amended land use policies, including but by no means limited to rulemaking or goal amendments. Other types of policy projects include: task forces and workgroups established (by DLCD or others) convened to recommend or refine policy ideas; research projects to gather information to inform future policy development; efforts toward the development of future agency legislative proposals, and; other types of special projects that are expected to establish policy (such as the ongoing Southern Oregon Pilot Project regarding farm and forest land protection in that region).

This proposed policy agenda seeks to establish the near-term policy agenda for the 2015-17 biennium. Long term projects and policy items are addressed in the [DLCD Strategic Plan](#).¹ Preliminary department proposals for the policy agenda are summarized in Section IV of this report.

The department is recommending the public and stakeholder groups be invited to participate in this discussion prior to and at the September meeting, and that they submit comments and suggestions for the policy agenda. To that end, the department is circulating this staff report to our listservs to solicit public input and will include input received in our final recommendation to the commission in September.

¹ A copy of the Strategic Plan accepted by the commission in November 2014 can be accessed at: http://www.oregon.gov/LCD/docs/publications/StrategicPlan2014-22_Draft.pdf

The department is additionally recommending that the policy agenda be informed by and, where possible, aligned with the Ten-Year Plan for a Healthy Environment, the Ten-Year Plan for Economy and Jobs, and the Governor's recommended budget for 2015-17. The recommended projects include some that are already underway and several new policy projects that are required by laws enacted during the 2015 legislative session. In addition, the department recommends consideration of several new policy projects that, while not required by law, are of significant importance and could be initiated this biennium if department resources permit.

This item is also a public hearing and the commission may receive input from the public about policy needs and priorities related to the land use program. As above, the department will review public comments received on this draft recommendation for inclusion in the final recommendation in September.

For additional information about this report, please contact Sadie Carney, Rural Policy Analyst and Communications Manager at 503-934-0036, or at sadie.carney@state.or.us.

II. BACKGROUND

The statewide planning program faces policy challenges that often come into focus at the start of a biennium, in response to new legislation but also due to: recent court decisions interpreting the program; policy concerns that have surfaced in the course of LCDC reviews of local comprehensive plans and periodic reviews; and a variety of other circumstances.

In accordance with state law, the commission and the department are charged with maintaining, improving and updating the state land use program through rulemaking, legislative proposals, and other actions. In this role, the commission periodically monitors and assesses the status of the land use program and responds to current land use planning issues based on input from the public, the department, the governor and the legislature. More specifically, under ORS 197.040 LCDC must:

- Adopt, amend and revise goals consistent with regional, county and city concerns;
- Adopt and amend policies that the commission considers necessary to carry out state land use laws;
- Prepare, collect, or provide land use inventories (or cause to be provided);
- Appoint advisory committees to aid the commission in carrying out ORS chapters 195, 196 and 197, and to provide technical and other assistance, as the commission considers necessary, to each such committee; and
- Review the land use planning responsibilities and authorities given to the state, regions, counties and cities, review the resources available to each level of government and make recommendations to the Legislative Assembly to improve the administration of the statewide land use program.

The approval of a policy agenda is not a mandatory exercise for the commission, but it does provide a way to fulfill the requirements in law described above. While the agenda is intended to

help the commission and the department identify, schedule, and manage policy work, the commission's approval of a policy agenda does not bind the commission or the department to pursuing every project on the agenda, nor does it prevent the pursuit of additional projects not here listed. The commission typically revisits and updates the policy agenda halfway through a biennium.

When considering the policy agenda, and as it carries out projects on the agenda, the commission follows the [Citizen Involvement Guidelines for Policy Development](#).² The commission also invites comments and recommendations from local governments and other stakeholders. In recommending a policy agenda, the department considers the agency's budget and staff levels, the ongoing core responsibilities, and other needs and available resources.

III. PRELIMINARY RECOMMENDATION FOR POLICY AGENDA

Consistent with the Governor's Ten-Year Plan for Oregon and the DLCD's Strategic Plan, the department recommends that this policy agenda include policy projects for the 2015-17 biennium. For all policy projects, mandatory or otherwise, this report provides a summary of project intent. The department is prepared to provide additional detail. Project proposals for the 2015-17 biennium are organized below as: ongoing projects; mandated projects; and additional recommended projects.

A. Ongoing Projects from 2013-2015 Biennium

The list below includes projects that are already underway from the previous policy agenda:

1. Southern Oregon Pilot Project:

*DLCD Strategic Plan Goal 1
Medium Effort, Staff and Commission*

This was included in the 2009-2011 and 2013-2015 policy agendas as a pilot project consistent with 2009 legislation (HB 2229). That legislation was based on recommendations from the Big Look Task Force to explore regional decision making. The department began preliminary work on this project in the spring of 2011, but suspended work on it in response to (unsuccessful) 2011 legislation on similar topics focused on Southern Oregon counties. A subsequent Executive Order 12-07, supported by a legislatively approved funding package, transitioned this project into the Southern Oregon Regional Pilot Project focusing on Jackson, Josephine and Douglas counties. Work began in December of 2012, and continues as the counties look for areas of consensus interpreting appropriate use and development of current resource and non-resource lands. The project is anticipated to conclude in early 2016.

2. Review of Metropolitan Greenhouse Gas Emissions Targets:

*DLCD Strategic Plan Goal 2
Complex Effort, Staff and Commission*

² <http://www.oregon.gov/LCD/docs/publications/citinvguidepoldev.pdf>

In 2011 the commission adopted rules setting greenhouse gas (GHG) reduction targets for metropolitan areas. Subsequently the Oregon Transportation Commission (OTC) accepted a statewide transportation strategy that outlines how the state can meet state GHG reduction goals in the transportation sector. Earlier this year the commission determined that the targets should be updated to extend the horizon to 2040, to incorporate new projections about fuels, fuel efficiency, and vehicle technology, and to consider two new metropolitan areas.

In order to successfully integrate actions to meet GHG reduction targets into plans, the regional transportation planning process must be better aligned with updated federal planning requirements, including consistent performance measures; consider actions from the statewide transportation strategy; and more effectively coordinate with local planning efforts. This project will include a review of the targets as well as existing metropolitan transportation planning requirements to improve the regional transportation planning process and make it easier for metropolitan areas to meet state, regional, and local objectives. This project will include rulemaking.

3. Tsunami Resilience Planning: *DLCD Strategic Plan Goal 2
Complex Effort, Staff Only*

The department is working with local governments along the coast to incorporate guidance from the publication “Preparing for a Cascadia Subduction Zone Tsunami: A Land Use Guide for Oregon Coastal Communities” into their plans. The department is providing technical assistance and financial resources where possible to assist local governments. The department is also working with other agencies to apply for additional federal funding to assist in this effort.

4. UGB Rulemaking (HB 2254): *DLCD Strategic Plan Goal 2
Complex Effort, Staff and Commission*

Streamlining of the Urban Growth Boundary (UGB) expansion process will be implemented through LCDC rules adopted before January 1, 2016. This rulemaking began in 2013 after the passage of HB 2254 and has been very complex. The result will be a new UGB evaluation and amendment option for small and large cities, which must meet certain performance standard and ensures an adequate supply of land for development over a 14-year period. The rules require cities to demonstrate at least seven years of serviceable lands within the UGB (rather than the current 20-year supply of land that is not necessarily serviceable), and that all land added to the UGB using the new method is suitable for urbanization. The rules also require cities to plan and zone lands to meet requirements for needed housing, and to avoid significant adverse effects on key transportation facilities.

5. Industrial Lands (Goal 9): *DLCD Strategic Plan Goal 2
Medium Effort, Staff and Commission*

When the commission completed major amendments to the Goal 9 rules in 2005, they agreed that a “second phase” rulemaking should be considered with emphasis on resolving Goal 9 questions in the context of the Metro UGB. Metro UGB and Metro urban reserve decisions by LCDC demonstrated that there is a considerable amount of disagreement as to how Goal 9 and “employment needs” should be applied in the Metro area. The department is in the process of evaluating different options and developing a recommendation to resolve the confusion for commission consideration during the biennium. [The level of effort is unknown at this time and has been assigned “medium” as a placeholder.]

6. Citizen Involvement and Land Use Program Outreach Improvements (with CIAC):

*DLCD Strategic Plan Goal 3
Low Effort, Staff and Commission*

The commission’s Citizen Involvement Advisory Committee has been tasked with recommending methods to further citizen involvement that do not cost local governments or that reduce costs for local government. Results of a committee designed survey are anticipated early in the 2015-17 biennium.

7. Goal 5 Rule Amendments related to the Endangered Species Act and the National Flood Insurance Program:

*DLCD Strategic Plan Goal 2
Complex Effort, Staff and Commission*

Two federal agencies have been engaged in consultation to determine how the National Flood Insurance Program will be revised to comply with the Endangered Species Act. The result of the consultation has not yet been released, but it is likely that it will result in local governments amending their development regulations to comply with federal requirements. Under current state rules, these local amendments would be subject to analysis and review under Goal 5 and administrative rules in division 23. These state requirements would be an additional burden on local governments, but would be unlikely to improve the outcome. Therefore it would be appropriate to amend the state administrative rules so that they do not apply to these local amendments implementing federal requirements.

8. Technical Amendments Concerning Road Alignments in Rural Areas

*DLCD Strategic Plan Goal 1
Low Effort, Staff and Commission*

In May 2015, the commission accepted the department’s recommendation to amend the rural reserves rules to address an anomaly in the exceptions provisions for roads. The specific circumstance involves an extension for Arndt Road, where an exception has already been taken and approved, but the county would like to modify the location. While the relocation of the approved road would not be a new use, the method for modifying an exception is to take a new exception, an action that is prohibited in rural reserves under OAR 660-027-0070(4). In accepting this recommendation, the commission committed to doing so after the

conclusion of the 2015 legislature, which effectively means that the project will be part of the 2015-17 policy agenda.

B. New Policy Projects Required by the 2015 Legislature

1. Align DLCD Rules with New Legislation: Passed legislation that would require either housekeeping or rulemaking to address statutory changes.

• **UGBs and Reserves:**

- **HB 2457** – DLCD bill allowing county to create parcel smaller than minimum size standard in resource zone (where the existing parcel straddles the UGB). *Low Effort, Rulemaking*
- **HB 3282** – Requires director of DLCD, at request of a city, to allow periodic review as method for sequential review of work talks related to potential amendment of UGB. *Low Effort, Rulemaking.*

• **Other Urban Bills:**

- **HB 3222** – Modifies provisions authorizing LCDC enforcement order with regard to clear and objective standards required for needed housing within UGBs. *Low Effort, Rulemaking.*

• **Industrial Lands:**

- **HB 3214** – Requires DLCD to amend rules regarding built or committed residential exception areas to allow rezoning to commercial or industrial use without a new exception. *Low Effort, Rulemaking.*

• **Transportation:**

- **SB 120** – Directs LCDC evaluate the transportation planning rules, and, if necessary, adopt or amend rules relating to transportation improvements. *Medium Effort, Rulemaking*

• **Farm and Forest:**

- **HB 2831** – Clarifies that a property line adjustment may not be used to increase parcel sizes for M49 parcels in resource zones. *No Rulemaking*
- **HB 3400** – Medical and Recreational Marijuana. This is the major, but not only bill that describes how and where marijuana may be grown processed and sold. The bill contains limited land use provisions for recreational marijuana, relating to dwellings on farmland, processing, and land use compatibility statements. *Medium Effort, Rulemaking*

C. New Policy Projects Recommended by the Department

- 1. Non-resource Lands Rulemaking:** *DLCD Strategic Plan Goal 1*
Complex, Research and Rulemaking

Develop a “non-resource lands” policy that is integrated with resource lands protection strategies, including consideration of carrying capacity, environmental and habitat protection, infrastructure requirements and availability and other factors. [Note: “Non-resource lands” are those rural lands that are not suitable for production of farm or forest products due to the physical properties of the land, e.g., poor quality soils.] There are currently no standards to guide counties in identifying and zoning non-resource lands. Rulemaking for non-resource lands is an urgent need; divisions 004 & 006 (possibly 033).

2. Farmland Protection Improvements: *DLCD Strategic Plan Goal 2*
Complex, Research and Rulemaking

This rulemaking would research, define and potentially develop review criteria for commercial activities in conjunction with farm use as well as private parks (currently problem catch-alls for inappropriate uses), consider potential new agri-tourism-related uses, such as: more specific definition for “preparation” of farm products, an anchor date for tracts that qualify for the expansion of nonconforming uses on high-value farmland, as well as making minor or technical amendments. A more targeted project was identified as a 2013-15 priority but was later dropped because staff determined additional research as being necessary.

3. Periodic Review Clean-up: *DLCD Strategic Plan Goal 2*
Low Effort, Rulemaking

OAR chapter 660, division 25, “Periodic Review,” amendments will be initiated as a result of HB 3282 (2015) (see section B). While the division is open, the department proposes to make several amendments to procedural requirements to clarify existing provisions. The amendments are expected to be minor and technical, so no rules advisory committee is anticipated and the complexity should be low.

D. Special Projects

Projects listed here do not involve policy making, and therefore will not be reflected on the commission’s policy agenda. The department is listing these projects because they are important to achieving the goals of the statewide land use planning program and affect department workload.

1. Estuary Planning: *DLCD Strategic Plan Goal 1*
Medium Effort, Research and Collaboration

The department is in the middle of a major update of the estuary portion of the statewide planning program. Several projects will be starting this year to follow up on the work completed in the last biennium. These projects will feed into future updates of estuary plans on the coast. The department will be starting a second Estuary Project of Special

Merit this October that will further update estuary inventory information available to local government and the public. The department was also successful in matching with a new National Oceanic and Atmospheric Agency Coastal Fellow, who will start in September, 2015. The fellow will develop an inventory of vulnerable estuarine shoreland resources.

2. Affordable Housing:

*DLCD Strategic Plan Goals 2 & 4
Research*

Housing affordability issues interface with state land use planning in several places, as such, address can embrace multiple approaches. A Hatfield Fellow is anticipated to begin research on this issue early in the biennium. As timeliness, appropriateness, and resources allow, the fellow will consider best practices, innovative approaches, and case studies in regard to affordable housing. Research could include: review of current Transportation Growth Management and Code Assistance programs administered by the department for effectiveness, creation of a set of “best practices” promoting affordable housing; research of statutory or rule changes requiring housing “efficiency” measures to be implemented by cities (e.g. “unbundling” of housing and parking, mandatory minimum density requirements, mandatory allowance of accessory dwelling units, allowance of variations on “inclusionary” housing to be implemented by local governments); or research of statutory or rule changes requiring local governments to implement non-zoning incentives for affordable housing (e.g. property tax exemption, systems development charge reduction or elimination, changes to building standards that allow “tiny” houses).

3. Abandoned Mill Sites:

*DLCD Strategic Plan Goal 2
Research*

ORS 197.719 creates a number of fully entitled industrial sites outside of UGBs across Oregon. DLCD is part of a community health/brownfield/land use project with the Health Authority, Department of Environmental Quality and Infrastructure Finance Authority that the organizations touted to the legislature during the 2015 session. Over the summer of 2015 a PhD candidate in land use at Portland State University will help us map abandoned mill sites, evaluate their utilization, evaluate the progress of communities impacted by closed mill sites, assemble a multi-layered Geological Information System map to inform policy discussions and explore new options to address re-use, community health and land use including (for the department) additional uses and a Transfer of Development Rights program. Results will be presented in several ways beginning the autumn of 2015, including either the Association of Oregon Cities conference or the planning directors group.

IV. PREDICTED BASE WORKLOAD FOR THE DEPARTMENT

The department’s capacity to pursue policy projects is constrained by the availability of staff and other resources. While the department is funded and directed to pursue policy work described

above, the majority of the agency's staff and resources are focused on the core work of the department, especially ongoing technical assistance and advice to local communities. The policy agenda is in large part intended to focus limited department policy staff and resources on the key projects the legislature and commission considers necessary or highest priority in order to maintain and improve state statewide land use policy.

In recommending policy work, the department is mindful of the resources needed for the core responsibilities, DLCD's "base workload" for purposes of this report. DLCD's base workload is described below very summarily through rough estimates of the amount of program staff and other resources necessary to perform periodic review, technical assistance and a large number of other mandated responsibilities. In general, this workload is borne by program staff assigned to support these responsibilities, but much of this work also demands time and effort by the commission as well as grant resources.

A significant portion of the base workload (and a key constraint for the commission to consider in establishing the policy agenda) is indicated by the number of UGB decisions expected to be coming to LCDC for review over the next two years. For the 2015-17 biennium DLCD regional representatives have identified about ten cities currently working on UGB amendments and most are likely to be submitted to the department for review.

Other elements with significant weight in the base workload include:

- Staff managing technical assistance grants and plan amendments.
- Staff providing technical assistance to local governments, including review of plan amendments (given the current budget climate, DLCD staff's "hands-on" technical assistance plays a crucial role for many cities and counties).
- Working with Department of Revenue to create an intergovernmental agreement to revise UGB amendment legal descriptions to ensure UGB amendments meet Department of Revenue standards.
- State Agency Coordination - coordinating planning efforts of state agencies to assure compliance with goals and compatibility with city and county comprehensive plans.
- Completing UGB streamlining work.
- The base workload also includes projects and tasks managed by the Coastal and Planning Services divisions: National Flood Insurance Program, Federal Emergency Management Agency Map, Code Assistance, Quick Response, Education and Outreach, Climate Adaptation, and the like.

V. RECOMMENDATION

The department is recommending the commission begin discussion of the policy agenda at the July meeting, including public comment and a discussion about proposed policy priorities. The department requests that the commission provide input and direction to the department in framing a final policy agenda proposal for the September 24-25 LCDC meeting.

The department's recommendation is as follows:

- Review and potential revision to policy projects for the 2015-17 biennium outlined in Section IV;
- Invite citizens and stakeholders to submit ideas and recommendations for policy projects, and to comment on the department proposal;
- Align new and ongoing policy agenda items with the department's Strategic Plan.

VI. ATTACHMENTS

A. DLCD Strategic Plan:

http://www.oregon.gov/LCD/docs/publications/StrategicPlan2014-22_Draft.pdf

B. Citizen Involvement Guidelines for Policy Development:

<http://www.oregon.gov/LCD/docs/publications/citinvguidepoldev.pdf>

C. DLCD Mission, Principles and Goals:

http://www.oregon.gov/LCD/pages/about_us.aspx