



UPDATED 2021-2023 POLICY AGENDA

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

- A result of the 2022 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;
- Are budgeted for work or completion within the current Legislatively Adopted Budget for DLCD;
- And include both internal and external facing items.

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. This updated Policy Agenda reflects the latter of the two.

DLCD's budget development and Policy Option Packages (POPs) are related to the Policy Agenda in that they are expressions of agency priority and intent. However, because POPs are agency budget proposals that will ultimately be decided upon by the legislature, the mid-biennium Policy Agenda update does not reflect the work proposed as part of the POPs. When and if DLCD's POPs are funded, those updates will be reflected in the next Policy Agenda.

DLCD's Policy Agenda does not represent all agency work. It only represents policy development and related work that is expected to appear before the Land Conservation and Development Commission (LCDC or Commission) is reflected in the Policy Agenda.

This updated policy agenda was approved by the LCDC at their November 17-18, 2022, [meeting](#).

The next major update of DLCD's 2023-2025 Policy Agenda will follow the conclusion of the 2023 legislative session.

Comments or questions on this Policy Agenda also may be directed to Sadie Carney, Policy Analyst and Communications Manager, at 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 captures these ideas in the public comment period that accompanies the development of a biennial Policy Agenda, in odd numbered years. 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. When the Policy Agenda is updated, mid-biennium, it is difficult to add new items.

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. Public involvement in policy development is central to Oregon's land use system and a core value at DLCD.

When is the opportunity to comment?

DLCD invites Community members and other stakeholders to comment each time a new Policy Agenda is written or updated. The next period for public comment will follow release of the Draft 2023-2025 Policy Agenda after the conclusion of the 2023 legislative session.

Comments or questions may be directed to Sadie Carney, Policy Analyst and Communications Manager, at sadie.carney@dlcd.oregon.gov

POLICY ITEMS

Ongoing Policy Work – External

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. “External” work has policy outcomes with impacts that affect jurisdictions, stakeholder groups, agencies or the public.

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.

Climate Friendly and Equitable Communities Rulemaking - Implementation

Division: Planning Services

The Climate-Friendly and Equitable Communities rules were adopted in July 2022, transforming the coordination of land use and transportation planning in Oregon’s metropolitan areas. Implementation by local governments has begun and DLCD has requested significant grant funding in its 2023-2025 Agency Request Budget (ARB) to support this work.

At the time of adoption, commission indicated a desire for continued updates by staff. Staff will regularly brief commission on guidance documents developed, local implementation

funding, and proposed changes to the rules. This is in addition to significant implementation work being done by agency staff.

Agency Impact: Large Effort

Policy Action: Rulemaking

Implementation funding: Agency Request Budget for 2023-2025 request 6FTE; \$10M for local grants

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.

SB 762 – Wildfire Omnibus Legislation

Division: Community Services

SB 762 requires DLCD, 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 minimize wildfire risk, in a report to the Legislative Assembly by October 1, 2022. The recommendations were presented to the commission at their September 2022 meeting.

The 2023 Oregon legislative assembly will consider department recommendations and may propose and pass legislation that directs DLCD to pursue rulemaking, grant-making, or technical assistance work in this area. DLCD has included a funding request in the 2023-2025 ARB for 2.64 full-time equivalent staff to continue this important wildfire resiliency planning work.

Agency Impact: Medium Effort

Policy Action: DLCD Legislative Recommendations

Implementation funding: Agency request budget for 2.64 FTE

Regional Housing Needs Analysis (HB 5006 Budget Note - 2021) – Oregon Housing Need Analysis

Division: Community Services

HB 5006, the end-of-session budget bill in 2021, included a budget note and one-time appropriation of \$1,306,912 to the department to develop a legislative proposal for incorporation of a Regional Housing Needs Analysis into future state and local planning processes. DLCD, in consultation with Oregon Housing and Community Services (OHCS), provided an initial legislative report on February 1, 2022 and will provide a final report by December 31, 2022. On August 31, 2022, staff made draft recommendations available for community feedback. The commission is scheduled to receive briefings on the Oregon Housing Needs Analysis (OHNA) recommendations at its September and November 2022 meetings.

DLCD has included a funding request for an additional 2.64 FTE and \$2.5M in grant funding in the DLCD 2023-2025 ARB to support housing related work.

Agency Impact: Large Effort

Policy Action: DLCD Legislative Recommendations

Implementation funding: Agency request budget for 2.64FTE and \$2.5M in grant funds for local government code, comp plan and policy work on housing production

Regional Housing Needs Analysis (HB 5202 Budget Note - 2022) – Housing Capacity

Division: Community Services

HB 5202, the end-of-session budget bill in 2022, included a budget note and one-time appropriation of \$150,000 to the department to support work on regional housing needs and land supply issues. DLCD formed a Housing Capacity work group and published draft legislative recommendations on August 24, 2022. Final legislative recommendations will be available by December 31, 2022. The commission is scheduled to receive briefings on housing capacity recommendations at its September and November 2022 meetings.

DLCD has included a funding request for an additional 2.64 FTE and \$2.5M in grant funding in the DLCD 2023-2025 ARB to support housing related work.

Agency Impact: Large Effort

Policy Action: DLCD Legislative Recommendations

Implementation funding: Agency request budget for 2.64 FTE and \$2.5M in grants for local government code, comp plan and policy work on housing production

Offshore Wind Energy Planning and Coordination

Division: Coastal

DLCD has an established role as the lead state agency coordinating with the federal process for floating offshore wind development. As the lead agency of the federally approved Oregon Coastal Management Program (OCMP), DLCD implements the state's federal consistency authority pursuant to the Coastal Zone Management Act of 1972 and associated federal regulations. The department implements federal consistency review by evaluating federal activities for compliance with state enforceable policies and their reasonable foreseeable effects to coastal uses and resources of the Oregon coastal zone. The federal Bureau of Ocean Energy Management is proposing floating offshore wind with proposed lease areas off the Oregon coast to be determine by the end of 2023. In HB 3375 (2021), DLCD is directed to coordinate with the networked Coastal management agency and local governments partners to evaluate floating offshore wind development activities for consistency with OCMP.

The Oregon Department of Energy will conduct a literature review on the benefits and challenges of integrating floating offshore wind energy into Oregon's electric grid in consultation with DLCD and other agencies.

DLCD has included a funding request for an additional 0.88 FTE in the DLCD 2023-2025 ARB to assist communities in planning and permitting offshore wind development.

Agency Impact: Large Effort

Policy Action: DLCDC Legislative Recommendations

Implementation funding: Agency request budget for 0.88 FTE

Ongoing Policy Work – Internal

Ongoing policy work represents policy projects that have carried over from a previous biennium. While these projects are already underway, it is useful to get feedback through the community engagement process about potential shifts in course, to share support for the work with our Commission, or to help refine outcomes. “Internal” work has policy outcomes that impact DLCDC as an agency, but does not impact external parties.

Climate Change Adaptation – Vulnerability Assessment

Division: Coastal

In 2021, the Oregon legislature provided DLCDC 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 DLCDC staff to update the DLCDC 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 DLCDC 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.

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.

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. Staff expect that this annual update will take place in January or April of 2023.

Agency Impact: Small Effort

Policy Action: Rulemaking

Implementation funding: Agency base budget

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 and limit our ability to coordinate agency-to-agency across the enterprise. To evaluate how SAC Programs could be updated and improved, DLCD will work with a partner agency or agencies to develop recommendations regarding SAC Program updates as well as possible amendments to administrative rules to reflect any changes made since existing rules were last amended.

Agency Impact: Medium Effort

Policy Action: Policy Research

Implementation funding: Agency base budget

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) in Oregon Administrative Rules 660-001-0005(1). 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.

Agency Impact: Small Effort

Policy Action: Rulemaking

Implementation funding: Agency base budget

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 5 Rule Update for Cultural Areas

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. Staff are in the process of convening a work group of Tribal members. Staff expect that first meeting to occur this fall.

A new administrative rule for Goal 5 Cultural Areas would ideally improve protection of areas and items that are important to one or more tribes in Oregon.

The objectives of this rule writing are to ensure:

- Existing data on known and suspected archeological sites are used to avoid disturbance from locally permitted development activities;
- 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.

A workgroup is being formed in Fall 2022 to begin discussions on this rulemaking. Rulemaking for this effort will require a Rulemaking Advisory Committee and is expected to initiate in the 2023-2025 biennium.

Agency Impact: Large Effort

Policy Action: Rulemaking

Implementation funding: Agency base budget

Equitable 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.”

Outcomes of diversity, equity and inclusion were not mentioned in the original Goal 1. Goal language likewise does not reflect current communication methods and techniques. There are no implementing rules to guide local governments in the broad and inclusive intent of the Goal to engage all Oregonians in the land use process.

The intent of this policy agenda proposal is to provide more guidance on the implementation of Goal 1, and to reflect equity and environmental justice through the public process of land use decision-making.

DLCD has included a funding request for an additional 1.76 FTE in the DLCD 2023-2025 ARB to advance agency work on providing opportunities for more equitable and inclusive community engagement.

Agency Impact: Large Effort

Policy Action: Research and Policy Development

Implementation funding: Agency requested 1.76 FTE and \$1.1M for this work

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 – Internal

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. The department is currently developing an equity-based strategic framework to help guide the agency's work over the next eight years. The Strategic Plan will be supported by and include DLCD's first Diversity, Equity, Inclusion and Racial Justice Plan.

DLCD staff plan to complete the agency Strategic Plan in December 2022 and present it to commission in the spring of 2023.

Agency Impact: Large Effort

Policy Action: Guidance document

Implementation funding: Agency base budget

Farmland Protection Improvements

Division: Community Services

Goal 3: Agricultural Lands has a significant body of implementing administrative rules. Incremental changes made over many years have resulted in places where inconsistencies, lack of clarity, and technical errors in rule make the rules difficult for local governments to interpret and implement consistently. With this policy item, staff propose to convene an agency workgroup to review a package of small rule changes and advance the fixes in a single rulemaking effort.

Proposed changes to rules are all within Oregon Administrative Rules Chapter 660 and fall into three categories:

1. Technical updates to rule and guidance documents: This includes conforming rulemaking, fixing circular language/incorrect references, grammar, codification of case law standards and updating guidance documents. Draft rule changes/guidance updates are mostly complete.
2. Clarifications: These are areas where DLCD has received repeated requests for interpretation from multiple local jurisdictions and have not been able to confidently provide definitive guidance. This area may also include topics for which we have published formal guidance documents, but not taken the time to integrate our interpretation into rule. It also includes areas where language appears to have been excluded as an oversight. Draft rules are mostly complete.
3. Interpretations with Policy Implications: This includes proposals to tighten up rules that have been problematic in that there is a history of controversy, court appeals and discussion around these uses or certain provisions associated with these uses – such as Home Occupations and Non-Farm Dwellings. This

may also include areas where the courts have suggested that LCDC rulemaking would be of benefit.

Agency Impact: Under discussion

Policy Action: Potential Rulemaking

Implementation funding: Agency base budget