2013 Legislative and Policy Agenda

Guiding Principles for Legislation
What OAPA should seek from legislative outcomes?

- **Benefit** – Is the proposal beneficial to the implementation of “best practices” planning principles concerning process and outcomes. Does it facilitate effective engagement of citizens; help sustain vital, resilient communities; and provide for an efficient allocation of public resources? Will the legislation advance the goals of the Oregon land use program and the APA objective of “making great communities happen”?

- **Clarity** - What will the proposed law require? Is it clear? What are the outcomes/products expected from local governments, state agencies, business, and private citizens? Is this a policy/proposal that will help the public understand the benefits of planning?

- **Diversity** – Is the proposal helpful to a broad range of citizens rather than narrow special interests? If the law applies to all cities and/or counties how will local governments of varying sizes in different parts of the state satisfy the law?

- **Cost** – How much will the proposal cost, to the state, the public, local governments or others?

- **Creativity** – Can we come up with a different, more creative proposal that accomplishes the same purpose? If a proposal has negative impacts, can we come up with a way to overcome the harmful effects consistent with the proposal’s intent? Can we think of a way to accomplish the purpose in a way that gets broader legislative support?

Urbanization Issues

*Issue Statement:*
The Oregon Land Use Planning Program is approaching its 40th anniversary. Most cities adopted their comprehensive plans and urban growth boundaries over the last 30 to 35 years. The Oregon land use program has been successful in protecting farm and forest lands by requiring cities to develop within urban growth boundaries. The process for cities to review and improve the capacity of their urban growth boundaries, particularly through expansion, is cumbersome, complex, and litigious. Some recent decisions of the Court of Appeals revealed differences between how they view the law regarding UGB expansion, and how the state and local governments have implemented it.

OAPA recommends and supports legislation that stays true to the purpose and intent of the land use system, while providing clarity and certainty to the process of UGB amendments. In 2011, the Department of Land Conservation and Development, League of Oregon Cities, and Association of Oregon Counties convened a work group to develop a new system of population forecasting. In 2012, the Governor’s office convened a design team to look at ways to create a new, simplified and streamlined framework for cities to follow in updating their land supplies for housing and employment, and do so more frequently. This effort expanded to include a larger...
stakeholder group referred to as the Urban Growth Advisory Committee (UGAC), which is
charged with reviewing the work of the design team, and through consensus, developing
several concepts regarding UGB amendments that could be introduced as legislation by the
Governor. OAPA is involved in both of these efforts, and proposes the following
recommendations to support their successful implementation.

**Recommendations:**

1. **Urban growth boundaries**
   - Support the efforts of the UGAC to develop new standard approaches for UGB
     amendments for housing and employment lands.
   - For all of these concepts, support clear direction to the Department of Land
     Conservation and Development and Land Conservation and Development Commission
     to conduct rulemaking where necessary to flesh out and better define targets, standards,
     and metrics.
   - Support the re-convening of the UGAC to serve as the rulemaking work group for these
     subsequent efforts.

2. **Governance, Provision of Urban Services and Annexation**
   - Support the UGAC’s efforts to streamline and improve the provision of public facilities to
     and annexation of land added to a UGB.
   - Support legislation improving coordination between cities and special districts for areas
     added to UGBs.
   - Oppose legislation that would circumvent existing urban service provider or Goal 2
     coordination agreements with property owners, such as waivers of remonstrance.
   - Support legislation that would promote the ability to annex.

3. **Population forecasting**
   - Support the legislative concept developed by the Population Forecasting Core Group,
     convened by DLCD, LOC, and AOC, to implement a new system of population
     forecasting for the state, counties, and cities.
   - Support the legislation and adequate funding necessary to direct the Population
     Research Center at Portland State University to act as the third party preparing the
     forecasts.

4. **Sustainable Growth/Sustainability**
   - Support legislation and/or rule changes that provide clarity to cities and counties on how
     to address climate change, energy, and food security through comprehensive plans and
     land use regulations.
   - Support funding for additional research and technical assistance through DLCD, ODOT
     or other state agencies that provides support for local and regional governments to
     address climate change, energy, food, community health and other planning best
     practices.

**Land Use Procedural Issues**

**Issue Statement:** As planners working on the front lines, the OAPA must continue to work to
streamline and clarify the planning process for participants. Additionally, OAPA should work to
ensure access to participation by the public is not weakened.
**Recommendations:**
1. Oppose legislation that attempts to weaken or discourage public participation in the planning process.

2. Encourage policy that provides public outreach and education concerning the benefits of land use planning.

**Rural Issues**

**Issue Statement:** OAPA continues to support the protection of farm and forest lands while supporting certain “non-farm” uses that do not negatively impact or conflict with resource management of lands and the long term viability of resource management.

**Recommendations:**
1. Support statutory and rule standards in ORS chapter 215 and OAR 660 divisions 6 and 33 that strengthen protection to farm and forest lands.

2. Continue to support activities that promote individual farm operations. Such promotional activities should be related, secondary and subordinate to the primary farm operation. Such uses can help to foster understanding of natural resource management, enhance understanding of food production, and supplement farmer income and regional economies.
   - Commercial activities in conjunction with farm use – support court decisions that require that the activity provide direct goods or services that are essential to agriculture or buy, store or process farm products from local farms.
   - Non-farm and non-forest uses – continue to allow such uses that are appropriate in farm and forest areas on land that is generally unsuitable for farm and forest use.
   - Agri-tourism activities – Monitor the implementation of SB 960 to ensure that the permitted events do not become the primary use on farms and that the new standards prevent or limit impacts to surrounding farm and forest operations. Continue to support legislation that would allow agri-tourism where secondary and subordinate to the primary farm operation and where subject to local review to minimize impacts to surrounding farm and forest operations.
   - Wineries – Monitor the implementation of HB 3280 (2011), especially with regard to its allowance of expanded food service and promotional activities. Support the establishment and participate in any work groups that oversee this work in progress. Continue to support legislation that subjects wineries to the same limitations on other special events, promotional activities and food services as other farm operations and to ensure that such activities individually or cumulatively do not harm surrounding farm or forest operations. Coordinate legislative comments with the Wine Industry, Farm Bureau, 1000 Friends of Oregon, AOC, DLCD and ODA.

3. Assist counties with the establishment of clear and objective standards for the review of economic activities that complement farm use. Such processes should include a mechanism for evaluating cumulative impacts on surrounding lands.

4. Support the siting of tourist-related facilities such as rural-scale restaurants, overnight accommodations and entertainment venues within urban areas or unincorporated communities.
5. Encourage LCDC to undertake rulemaking (and participate in such rulemaking efforts) to:
   - Define private parks, farm stands and home occupations to clarify appropriate uses and to exclude uses that are detrimental to farm and forest operations and other nearby land uses.
   - Require communities to use the most currently available Goal 5 inventory information when reviewing significant development proposals.
   - All rule making should be reviewed to ensure consistency in the use of terminology, definitions and language between ORS and implementing OAR’s.

Energy

Issue Statement: Energy development is an emergent topic for land use planners. Development of renewable energy projects on farm and forest land is a departure from Goals 3 and 4 of Oregon’s land use planning program, which are designed to protect farm and forest ground from industrial development. While renewable energy is compatible with some farm and forest practices, there is emerging science to show such development has conflicts with natural resources as well as the human environment. Another departure for Oregon is the super-siting of large energy projects, including large transmission lines, by the Oregon Department of Energy.

Governor Kitzhaber recently released a draft 10-Year Energy Action Plan, a part of which provides recommendations to balance the conflicts. While a comprehensive approach to energy policy provides a necessary framework for balancing the conflicts, land use planning still faces permitting and planning challenges. On the one hand, renewable energy provides clean energy and decreases dependence on foreign oil imports. On the other hand development brings hundreds of miles of transmission lines, roads and impacts to farm and range land production. Recommendations contained in the 10-Year Energy Action Plan directed at the regulatory framework should be carefully scrutinized with other land use objectives in Oregon.

The Governor’s 10-year Energy Action Plan establishes an agenda to promote renewable energy development. Oregon APA should view each specific regulatory or legislative recommendation with the same guiding principles established for land use legislation.

OAPA recognizes that in the current budget climate long range planning efforts are not likely to be funded. Consequently, the proposed legislative agenda is in two parts: the first deals with the short-term and focuses on guiding principles on wind and transmission lines; the second is a long-term policy for comprehensive energy planning. The third part identifies the Action Items in the 10-Year Energy Action Plan which should be evaluated by LPAC with the same guiding principles for legislation.

Short Term Recommendation
1. For addressing impacts to farm and forest lands:
   - Support state and/or county initiatives to inventory potential sites for renewable energy development and to adopt comprehensive plan designations that reflect these areas.
   - Support the development of alternative energy sources in farm and forest areas where appropriate, where potential adverse impacts can be adequately mitigated and where cumulative impacts are considered.
2. Support siting standards for wind projects that fall under state and local review consistent with federal standards. Standards should:
   - Include reasonable requirements to address the cumulative impacts of such projects on fish and wildlife.
   - Allow for public input on wind projects, regardless of size of project (i.e., deter developers from proposing projects just under the threshold for federal review).

3. Support location of biomass composting facilities and operations at industrial sites, including reuse of abandoned lumber mills.

4. Monitor DLCD’s rulemaking efforts on siting of commercial scale solar energy projects on EFU land. Support efforts that limit the siting of large projects (between 12-100 acres, with project over 100 acres subject to State Energy Facility Siting Council review) to lands that:
   - Are east of the Cascades;
   - Have marginal utilitarian value (the work group is currently discussing soils and water testing to make this determination); and
   - Are located near existing or planned transmission lines.

Long Term Comprehensive Planning Recommendations

1. **Support legislation to update Goal 5 Energy Resources**
   Although energy is a Goal 5 Resource, most county Comprehensive Plans do not have an inventory of “significant” energy sites. Given the growing controversy around renewable energy development, in particular the cumulative impacts to natural resources and aesthetic impacts in certain pristine areas, Goal 5 is a tool that would provide an objective forum for weighing impacts of one resource over another. Currently, developers apply for land use permits from either a county or the State Energy Facility Siting Council. Impacts of a development are mitigated with conditions to the permit. The Goal 5 process would allow for a comprehensive review of the impacts and allow a county to conduct a cost-benefit analysis of protecting one resource versus another resource. This concept may appeal to the renewable energy industry and the development community if it could be shown that an energy resource listed as “significant” would have protection and defense against NIMBY’s.

2. **Support legislation to develop regional transmission plans**
   Several new major transmission line projects will likely be built in Oregon over the next several years. Additionally, literally hundreds of miles of smaller capacity transmission lines are being built in Oregon in order to transmit power from renewable energy projects to a larger transmission grid. The land use review is limited in scope to a single project, yet planners recognize the impacts of multiple transmission lines across the landscape. Federal and state siting guidelines often drive the process. Possible legislation would support:
   - The development of regional transmission corridors (and incentives) to locate in certain areas and avoid other areas.
   - Identify the policy, goals and objectives statewide for energy and transmission development.
   - Identify barriers to “supersizing” transmission lines which would allow larger projects and minimize the proliferation of numerous, smaller projects.
Governor’s 10-Year Energy Action Plan

The Governor’s Draft 10-Year Energy Action Plan has recently been released (http://oregon.gov/energy/pages/ten_year/ten_year_energy_plan.aspx). In terms of land use planning, the Energy Plan functions as an advocacy tool for encouraging renewable energy development. The Plan does not acknowledge the fact that Oregonians are increasingly polarized about the merits of wind energy development and the tax subsidies in particular. Rather, the Plan encourages renewable energy development and includes recommendations for streamlining approval of projects. Using the guiding principles, OAPA has submitted a list of Action Items that should continue to be monitored (see attached letter).

Transmission Line Legislative Concept

Background: One externality of renewable energy development is the proliferation of transmission lines across the landscape, impacting prime farmland and natural resource areas. For a number of reasons, developers are resisting co-location of transmission lines. The resulting impact of numerous, single-purpose transmission lines can have serious long term negative impacts to farm lands in Oregon.

There are a number of tools, incentives and regulations that could foster the objective of reducing the overall number of small transmission lines in Oregon. Although federal laws regulating transmission lines were designed to minimize transmission lines there is a loophole in the land use system that allows multiple, single-purpose transmission lines in Oregon.

The discrepancy between regulated utilities and private transmission lines warrants further review and legislative action. The need to connect energy supply (renewable and nonrenewable) resources to the transmission grid should be balanced with appropriate regulatory oversight that balances equally the objectives to protect farm and forest ground, natural resources, habitat and the human environment, with public need for electrical transmission and public safety.

The Public Utility Commission (PUC) provides rigorous regulatory oversight for publicly-owned transmission lines. For example, the PUC requires a new transmission line be justified as part of an Integrated Resource Plan (IRP), in order to justify the investment and the “public need” for a new line. The PUC regulates and permits the construction, operation and maintenance of new lines. However, this PUC oversight for “public need” and public safety does not apply to privately owned transmission lines.

In terms of land use permitting, development on lands zoned Exclusive Farm Use (EFU) makes no distinction between a regulated public utility and a private transmission line. The regulatory standards are the same, in spite of the fact that there is no demonstrated “public need” for a transmission line owned and operated by a private company that serves a private interest and there is no PUC oversight for the construction, operation and maintenance of high voltage transmission lines.

While there may be a need for new power supply sources, there is no demonstrated “public need” for a transmission line whose purpose is to transmit power from an energy facility to the transportation grid for a private developer. Yet, existing land use regulations for farm land treat the two equally. A transmission line constructed to benefit a developer and a few landowners has the same right to impact prime farmland as does a major transmission line constructed for the purpose of providing electricity to a large constituency. It is not likely that the Oregon
legislature intended this, for up until a few years ago, only public utilities constructed and
operated major transmission lines. The onslaught of renewable energy development has
changed that.

Farm Land Versus Forest Land Standards
Standards for transmission line development on Forest zoned lands are much different than
farm land. In forest and farm zones, local distribution lines are allowed outright. In the Forest
Zone, transmission lines are permitted as a Conditional Use whereas in the Farm Zone
Transmission lines are permitted as a Land Use Decision, subject only to ORS 215.275. In the
Forest Zone, OAR 660-006-0025(q) allows “[n]ew electric transmission lines with right of way
widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g. gas, oil,
geothermal, telephone, fiber optic cable) with rights of way 50 feet or less in width.” ORS 772.210

Consideration should be given to level the regulatory playing field between farm and forest land
and providing farm land comparable protection. The forest standard allows a local government
to weigh the public interests of farmland protection, habitat and other resource protection, to
encourage co-location and to add reasonable conditions to mitigate impacts. The existing
standard on EFU zoned land, found in ORS 215.283(1), effectively prohibits a local
government from recognizing comprehensive plan policies to protect farm land. By making a
non-utility transmission line a use allowed in ORS 215.283(2), counties could conduct
reasonable review of impacts to farmland, encourage co-location in existing transmission
corridors and impose reasonable conditions.

Recommendations:
1. Modify the definition in ORS 215.275 to include only transmission lines specified in ORS
   772.210. This would clarify that regulated public utilities and cooperatives, because of their
   other public oversight (PUC, etc.) can continue to enjoy a more modest land use regulation.

2. Add a category in ORS 215.283(2) that includes transmission lines not specified in ORS
   772.210. This would make the regulatory process and standard similar to that in the forest
   zone.

3. Modify ORS so that local governments may charge a fee for use of public rights of way for
   private transmission lines.

4. Modify PUC statutes so that PUC has authority and oversight for construction, operation and
   maintenance and safety standards for private and public transmission lines. Exception
   would be transmission lines regulated by electric cooperative association.

Integrated Water Resources Strategy
Issue Statement: Water is of premiere importance to Oregon’s Future. Adequate water
supplies and the carrying capacity of water and natural resources is a predominant planning
guideline in 14 of the State’s 19 Statewide Planning Goals. Most of Oregon’s streams are over-
appropriated and many counties and basins are experiencing some form of groundwater
decline. As an example, the level of groundwater decline in the Umatilla Basin surpasses the
worst declines in much of the world. Thus, careful planning and optimization of remaining water
supplies is critical. To ensure a sustainable water supply, Oregon will need to take a methodical
approach to planning, policy development, water storage, efficiency and collaboration at both
the state and local level.
For the first time in history, Oregon has a strategy, the Integrated Water Resources Strategy (IWRS), which may assist the state in implementing innovative solutions to the State’s current and future water supply problems and conflicts. The IWRS recommends long-term solutions be derived from “Place Based” planning at the local and regional level. Implementation of the IWRS will be complex, complicated, and sometimes controversial but the effort and investment warrants support in order to guarantee economic opportunity and environmental sustainability for current and future Oregonians.

**Recommendations:**

1. Support the Oregon Water Resources Department (OWRD) in its efforts to obtain funding for “place based water resources planning” in upcoming legislative sessions and implementation of recommendations resulting from such plans.

2. Support legislation that provides funding and incentives for proactive, consensus-based water management solutions and projects including, but not limited to the on-going pilot efforts in the Umatilla Basin, and potential projects in the Deschutes Basin.

3. Oppose legislation from special interest groups and entities that seek to circumvent the consensus based water management and planning efforts that are recommended in the IWRS.

4. Encourage and support update of State Agency Coordination (SAC) Programs to ensure appropriate coordination between water resources and land use planning. (See page 12 of Draft Work Plan. [http://www.oregon.gov/owrd/LAW/docs/f_Chapter_1_Final.pdf](http://www.oregon.gov/owrd/LAW/docs/f_Chapter_1_Final.pdf))

5. Support efforts to bridge water and land use planning efforts.

6. Support the Department of Land Conservation and Development’s participation in carrying out this strategy with adequate funding and staff resources, and clear policy direction.

**Regional Planning**

Support the following items from OAPA’s Regional Planning Study:

1. Advocate for and support a process to identify language in state law, regulations or rules that prohibit or discourage creation of a single regional planning and decision-making body (e.g. COG, regional planning commission).

2. Create State legislation, and suggest any rule changes, to allow either CoGs or RPCs to conduct a regional buildable lands analysis (including a housing needs analysis and an economic opportunities analysis) and for local governments to use it as the factual basis for all potential UGB expansions in that region.

3. Advocate for prioritization within major state departmental budgets to help fund the following: improvements to state and regional data collection, management and analysis; an audit and streamlining suggestions for planning and related laws, rules and processes; and incentive programs to support regional planning.

4. Encourage OTC and LCDC to advocate with MPOs for expansion of their boundaries to include their travel shed areas.
5. Advocate with state agencies and regional planning bodies to track and submit applications for federal funding that could provide additional resources for regional planning activities.

Equity in Land Use Planning

*Issue Statement:* In the past, OAPA has taken positions in support of affordable housing in its legislative agenda. For this session, LPAC recommends acknowledging that equity goes beyond affordable housing and includes aspects such as access to public transportation, parks, food, other goods and services. Focus should be to support the development and planning of communities that promote active, healthy living.

The following are initial guiding principles upon which a legislative agenda to address equity will be based:

- Planning for economic diversity to ensure creation of opportunity neighborhoods for all income levels. Opportunity neighborhoods are developments that offer housing for a mix of income, ages and abilities. Opportunity neighborhoods support the educational opportunities of residents and the economic future of the surrounding community.
- For those neighborhoods that do not meet the description of an opportunity neighborhood, we need to emphasize methods to close the opportunity gap through: increasing neighborhood access for a mix of income, ages and abilities; increasing education opportunities; and establishing economic improvement mechanisms.
- Avoid displacement that creates or expands the opportunity gap.
- Take special care to ensure that the details for streets, building parks, and public spaces all work in concert to make the neighborhood a place where people want to live and can live safely.

*Recommendations:*

1. Support legislation to remove the ban on inclusionary zoning, as set forth in ORS 197.309. In the alternative, support pilot programs for removing the ban.

2. Encourage research, education and outreach of “best practices” for community design and land use patterns that encourage active and healthy lifestyle choices, such as increased opportunities for pedestrian, bicycle and other non-motorized transportation and active recreation. Support incentives to encourage cities to implement such standards and policies.

3. Support the Oregon Housing Alliance’s legislative agenda that seeks to maintain the funding dedicated to putting affordable housing (both rental and homeownership opportunities) within reach for more Oregonians and to fund programs designed to end homelessness.

4. Support legislation to increase the supply of affordable housing and support livable communities by renewing tax abatement for multi-unit housing in transit-oriented districts.

5. Support dedication of state funding (such as ODOT TGM grants) to projects that support equitable planning objectives outlined above.
Destination Resorts

**Issue Statement:** The OAPA has cautiously supported the Destination Resort concept, believing it can provide a long-term economic base that takes advantage of Oregon’s bountiful natural resources in a non-consumptive and sustainable manner. However, Destination Resort siting and development must be done in a manner that directly addresses recreation needs and does not jeopardize established urban and rural communities, so that resorts become little more than ex-urban developments. The major purpose for Destination Resorts must be, in both the long and short term, to provide recreation opportunities for visitors and vacationers.

We have and will continue to support efforts to update Destination Resort regulations to respond to the changing economic, climate and recreation market, but not at the expense of compromising Statewide Planning Goals. Generally, residential homes are not necessary for recreational activities and should not be allowed in non-urban areas.

**Recommendations:**

1. Develop a new program that provides for recreational opportunities under Goal 8 that allows for a transition from the existing model for approving destination resorts in an equitable and comprehensive manner. Shift in focus should be from onsite developed recreation amenities to access and enjoyment of nearby scenic, cultural and natural resources

2. Support legislation/rulemaking that encourages tourist-focused DRs in suitable rural locations with appropriate safeguards. Such safeguards should:
   - Avoid creation of “ex-urban” communities by including considerations such as:
     o Restricting subdivision, lot creation;
     o Limiting the maximum size of housing;
     o Limiting garages, outbuildings and private open areas for individual units;
     o Requiring visitor-oriented accommodations, including a lodge with meeting rooms and restaurants; and
     o Limiting other commercial uses to the types and levels necessary to meet the needs of visitors.
   - Require distance limitations from cities and/or unincorporated communities and other destination resorts.
   - Require state agency and local government coordination on issues such as land use, public facilities, emergency medical services, sheriff’s patrol and safety and traffic, economic and environmental impacts.

3. Support requirements of compatibility with adjacent land uses.

4. Support additional restriction in the siting of DRs in conservation opportunity or strategy areas and Goal 7 hazard areas