

May 26, 2005

TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director
SUBJECT: **Agenda Item 10, June 9-10, 2005 Commission Meeting**

DIRECTOR'S REPORT

1. INFORMATION UPDATES

A. PARTICIPATION IN LUBA APPEALS AND RECENT LUBA AND APPELLATE COURT OPINIONS

ORS 197.040(1)(c)(C) requires the Land Conservation and Development Commission to determine whether recent Land Use Board of Appeals (LUBA) and appellate court decisions require goal or rule amendments.

ORS 197.090(2) requires the Director to report to the Commission on each appellate case in which the Department participates, and on the positions taken in each such case.

1. Department participation in appeals

Between April 7 and May 15, 2005, the Department received notice of eight appeals filed with LUBA.

On April 21, 2005, LUBA issued a decision in *Scott C. Young, M.D. and Robin James v. Jackson County*, LUBA No. 2005-001, which appealed the county's denial of a change of use from residence to religious facility on land zoned Exclusive Farm Use within three miles of Ashland's urban growth boundary. The department participated as an intervenor in support of the county decision. County and state laws (OAR 660-033-0120) both require a goal exception for approval of a religious use on farmland within three miles of a UGB. LUBA affirmed the county decision, holding that a requirement to apply for a goal exception is not a "substantial burden on religious exercise" under the federal Religious Land Use and Institutionalized Persons Act of 2000. May 12 was the last day for Young and James to file notice of appeal with the Court of Appeals. No appeal had been filed as of May 18.

On April 29, 2005, LUBA issued a decision in *Dennis Regen and Victoria Regen v. Lincoln County*, LUBA No. 2004-202, which appealed county denial of a land use consistency determination for an Oregon Parks and Recreation Ocean Shore Permit to install a concrete

barrier to stop bluff erosion. The department participated as an intervenor in support of the county's decision. LUBA affirmed the county decision. LUBA also found that the challenged Goal 18 Implementation Requirement #5 is ambiguous and its meaning does not clearly coincide with the department's historical interpretation and application of the text.

2. LUBA opinions

Between April 7 and May 15, 2005, the Department received copies of 21 recently issued LUBA opinions. Of these, LUBA dismissed four, affirmed seven, remanded seven, reversed two, and transferred one petition to circuit court.

Seven of these decisions concern the application or interpretation of a statewide planning goal or LCDC administrative rule:

Young and James v. Jackson County, LUBA No. 2005-001 (OAR 660-033-0120)
Regen v. Lincoln County, LUBA No. 2004-202 (Goal 18 Implementation Requirement #5)
Just v. Lebanon, LUBA No. 2003-106 (TPR: 660-012-0060 & 055(4)(b))
Sommer v. Josephine County, LUBA No. 2004-131 (Goal 11 Policy 3(B) and OAR 660-004-0040)
Mason v. Corvallis, LUBA No. 2004-152 (TPR: 660-012-0060)
Doob v. Josephine County, LUBA No. 2004-175 (Goal 11 and OAR 660, Divisions 004 and 014)
Oregon Shores Conservation Coalition v. Brookings, LUBA No. 2004-192 (TPR: OAR 660, Division 012).

One decision requires a goal or administrative rule amendment:

Regen v. Lincoln County, LUBA No. 2004-202 (Goal 18 Implementation Requirement #5) (see discussion under section 1 above.).

3. Appellate court decisions

Between April 7 and May 15, 2005, the Department received no copies of recently issued opinions from the Court of Appeals.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

The general fund grant program is winding up for this biennium. After a flurry of amendments during the early spring, local governments are busy finishing up projects for final payment this summer. The department has been apprised that some grants, in whole or in part, will be returned because other local priorities have meant the planning project could not proceed. It is too late in the biennium to effectively award all of these reverted funds to other projects.

The department is also preparing materials to distribute grant applications for the 2005-2007 biennium. The Grants Advisory Committee met in February to provide input. One issue is the Grants Allocation Plan. A note in the 2003-2005 department budget required the Commission adopt this plan; it is unclear whether there will be a similar note in the 2005-2007 budget, but the committee and department staff agreed that bringing a plan for the next biennium to the Commission is worthwhile. The plan cannot be completed until the department budget gets adopted, because the plan needs to address any requirements that may be reflected in budget notes, but staff will be bringing it forward as soon as possible.

Coastal Zone Federal Fund Grants

Coastal local governments have been notified that they are again eligible for grant assistance from the department's federal Coastal Zone Management grant from the National Oceanic and Atmospheric Administration. DLCD will award a total of \$729,000 in FY05-06 (beginning July 1, 2005) in four categories, coastal planning assistance (\$340,000), technical assistance/priority projects (\$129,000), stormwater management (\$60,000), and small-scale construction or acquisition projects (\$200,000) to improve access to or use of coastal resources. DLCD Coastal Services staff has been working with local governments to finish projects funded by FY04-05 funds or to extend those local grants to allow time for completion. The department has requested a no-cost time extension from NOAA to extend the FY04-05 grant to June 30, 2006.

With the FY05-06 grant, the Coastal Services Division will implement a new grants database and tracking system that has been in development for about a year. This database has been developed by Lloyd Chapman, long-time DLCD staffer now retired, in close consultation with department staff. Lorinda DeHaan, Coastal Administrative Assistant, has been working with Lloyd to populate the grants data base for previous years.

In addition, the Coastal Services Division manager and other staff continue to monitor a number of projects funded via Intergovernmental Cooperative Agreements or contracts, including a significant economic development study and master planning project with City of Newport and a complex process at the mouth of the Columbia River to develop and carry out a demonstration project for beneficial use of sands dredged from the mouth of the Columbia to protect the south jetty and adjacent beaches on Clatsop Spit..

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

There have been no tasks submitted to the department or decisions made by the director since the last commission meeting. We anticipate an increase in activity at the end of the biennium, as several jurisdictions are completing tasks with grant assistance.

2. DEPARTMENT PROGRAM ACTIVITIES AND INTITIAIVES

A. DEPARTMENT HONORED BY UNIVERSITY OF OREGON

The department will be honored as “Community Partner of the Year” at the University of Oregon’s Fourth Annual Awards Program on June 3. As the award states, the UO’s Department of Planning, Public Policy and Management is “grateful to the DLCD for working for many years with our students and faculty and for serving as a model of exemplary public administration and planning.” In partnership with DLCD, the UO’s Community Planning Workshop will soon publish a handbook on school siting that will give school districts, local governments, and others guidance on “best practices” for locating schools. Students have played a major role in this project.

B COASTAL DIVISION ACTIVITIES

Ocean Policy Advisory Council: The Marine Affairs Coordinator has been meeting with the Governor’s Natural Resources office to plan for the first meeting of the Ocean Policy Advisory Council (OPAC) subsequent to Senate confirmation in April of members appointed by the Governor. The OPAC membership and mandate was amended in the 2003 legislature and has not met since December, 2002. The department is charged with providing staff support the OPAC. In addition, the Director will serve as the department’s ex-officio member.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. RECRUITMENTS

The department is finalizing recruitment for the Fiscal Analyst 2/Budget Officer position in the Operations Services Division. The department anticipates an approximate hire date occurring in June.

B. NEW STAFF

Matthew Krall, formerly the City Planner in Jefferson, will be joining the department as a planner with the Transportation and Growth Management Program on June 1. Matthew’s experience with local government will be a great asset to the program..

Diana Evans has begun her work as the Coastal Grants Administrator. She has experience in grants management at the University of Oregon and Oregon State University, and in fiscal management for a public utility.

C. DIRECTOR ACTIVITIES

During the period of this report the director has been involved in several activities in support of the work of the department, both within the department and internally.

Highlights of the director's activities include:

- Ongoing participation in the Governor's Economic Revitalization Team.
- Participation in the Governor's Agency Advisors Committee.
- Participation in the Natural Resources Cabinet.
- Ongoing senior staff meetings with the Department of Transportation, to help improve coordination and communication between DLCD and ODOT.
- Clackamas County C-4 Meeting (Oregon City, May 5)
- Oregon City Attorney Association Conference (Newport, May 6)
- Monmouth-Independence Rotary Club (Monmouth, May 12)
- Metro Measure 37 Work Group Meeting (Portland, May 16)
- Oregon Chapter of International Right-of-Way Association (Hood River, May 18)
- Oregon City Planning Directors Association (McKenzie River Conference Center, May 20)
- Portland State University: Community Development Student Group (Portland, May 25)
- Association of Oregon Counties Measure 37 Workshop (Salem, May 26)

D. TRAINING

The department continues to evaluate affirmative action training opportunities to meet Affirmative Action Reporting requirements.

4. LEGISLATIVE UPDATES

A. SESSION LEGISLATIVE ACTIVITIES

The department continues to closely monitor and participate in the legislative session, testimony to legislative committees, meetings with individual legislators and meetings with legislative work groups.

The director meets regularly on legislative issues with state Agency Heads and the Natural Resources Cabinet. Bob Rindy meets regularly with legislative coordinators from other Natural Resources Agencies. The director and Bob Rindy also meet regularly with the Commission's Legislative Subcommittee to review legislation and legislative strategies.

As of May 27, 2005, the department is tracking 269 bills and has prepared over 254 fiscal impact statements (including amendments) in response to requests from the Legislative Fiscal Office – this exceeds our average number of fiscals prepared for previous sessions (average 170).

Two out of three of the department's bills have passed the legislature and are on the Governor's desk. SB 96 would authorize LCDC to amend a goal with only one hearing if the amendment is required as a result of a new or amended statute. SB 103 corrects a previous legislative error by adding farm worker housing provisions to EFU statutes in marginal lands counties. Both these bills passed on the Senate and House floor with no opposing votes.

SB 82, establishing the Task Force on Land Use Planning (i.e., the "30-year Review" or "big look" bill), was referred to the Ways and Means Committee, and was thereafter subsequently referred to the Special Senate Budget Committee when the Joint Ways and Means Committee was closed. No hearing has been scheduled on the bill as of the date of this report. See the budget report below regarding action on the Governor's recommended budget to fund this bill, should it pass.

The department has been actively involved in two legislative workgroups drafting new legislation. One of these was established by Senator Ringo in order to work on SB 1037 relating to Measure 37. That bill was passed out of the Senate Land Use committee with one Democrat and One republican opposing. However, it has not yet been sent to the Senate floor on the date of this report. The department issued a floor letter supporting the bill as a "work in progress" for the purpose of advancing the ongoing discussions of a legislative clarification of Measure 37, which was provided to all Senate members on May 27th. Meanwhile, Rep. Garrard, Chair of the House Land Use Committee, has announced that he will be inserting much of the bill into House Bill 3120 when his committee meets on June 1.

There are a number of land use bills passing or on their way to passing and that the department supports or does not oppose. However, there are several bills that have passed the house that the department does not support. So far, none of these has passed the Senate Environment and Land Use committee, although one of these bills was the subject of a

hearing in that Senate committee, that being HB 2458 concerning commercial and industrial uses outside UGBs. Bob Rindy and Chair Van Landingham presented testimony in opposition to that bill, citing the commission's workgroup currently underway to find a solution to this issue. So far the bill has not been subject to a vote in the Senate committee.

The periodic review reform bill, HB 3310 has passed the House, but is being amended to reflect the recommendation of the Interim Periodic Review Committee Chaired by John Van Landingham. It is scheduled for a hearing in the Senate Environment and Land Use Committee on May 31, and will likely pass to the Senate floor at that time.

The workgroup was established by the House Land Use Committee to consider ways to increase the supply of large industrial sites statewide has disbanded. The workgroup was chaired by Tom Gallagher and was working on HB 2963 in order to establish a "fast-track" process to add sites to urban growth boundaries for large-scale industrial use. That bill came up for a vote in the House Land Use Committee, failed. Discussions relating to some amended version of the bill are ongoing.

The department's bill tracking list is provided to the commission on a weekly basis, so is not attached here.

B. LEGISLATIVE ACTION REGARDING THE AGENCY BUDGET

On May 19, 2005, the department's budget was acted on by the Natural Resources subcommittee of the Senate Budget Committee. The subcommittee, based on guidance from the Senate Co-chair, approved the department' base budget (essentially maintaining current programs and services, but with a reduction in the mineral/aggregate position from .83 FTE to .58 FTE on account of the loss of funding for the position from ODOT), and an additional \$800,000 for Measure 37 claims administration. The Measure 37 package includes three Planner positions and one AS2, plus money for services and supplies and attorney general costs.

The subcommittee also approved some technical adjustments and all of the policy option packages submitted in Governor's Recommended Budget *except*: (1) The 30-year review (aka, Big Look; aka, SB 82); (2) The deputy director position; and (3) The IT package. Those three high-priority policy option packages have not been funded at this point.

In taking its action on the budget, the subcommittee made a point of saying this was not the final word on the budget, and expressly left open the possibility that the department's budget will be part of the session "end game" and will likely not be fully resolved until very late in the session.

The subcommittee also approved the department's proposed performance measures with some changes and a budget note directing the department to work with some of the other Natural Resource agencies on streamlining the permitting process for removal-fill and aggregate mining in streams.

5. LCDC RULEMAKING WORKGROUP UPDATES

A. RURAL COMMERCIAL AND INDUSTRIAL WORKGROUP

The committee met in April and continued discussion of available data on rural commercial and industrial acreage and the definition of “rural.” The only conclusion the committee reached at this meeting was that this issue of whether to address connections to existing sewer service was deemed a regional problem and therefore the solution should be reached at the regional level. The committee meets again in early June.

B. UGB AMENDMENT PROCESS WORK GROUP

The Workgroup last met on April 21, and agreed it would not meet again until after the legislative session. The workgroup appointed a small subcommittee to meet in the interim to discuss the safe harbor ideas that have been brought to the workgroup so far. The workgroup is scheduled to meet on June 8, with staff and Commissioner Worrix attending.

6. BALLOT MEASURE 37 UPDATE

Information on department activities relating to Ballot Measure 37 will be covered separately under Agenda Item 6.