

July 26, 2006

TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director
SUBJECT: **Agenda Item 9, August 9-11, 2006 LCDC Meeting**

DIRECTOR'S REPORT

1. INFORMATION UPDATES

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

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

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.

Department Participation in Appeals

Between June 13 and July 24, 2006, the Department received notice of 28 appeals filed with LUBA. The department is not participating in any of these appeals.

The Commission received a briefing at its Pendleton meeting on the Court of Appeals decision in *Wetherell v. Douglas County*. On June 20, 2006, the Oregon Supreme Court accepted review of the case at the request of the Respondent, Great American Properties Limited Partnership. The department intends to participate in the Supreme Court review, and is considering the filing of an *amicus* brief with the court, as it did in the Court of Appeals. A memorandum more fully describing the case and the department's interest in it is attached as Attachment A.

LUBA Opinions

Between June 13 and July 24, 2006, the Department received copies of 41 recently issued LUBA opinions. Of these, LUBA dismissed 26, affirmed 12, remanded 3, reversed 0, and transferred 0 petitions to circuit court.

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

- *Borton v. Coos County*, LUBA No. 2005-153, decided 6/12/06: Goal 18
- *People for Responsible Prosperity, et al v. City of Warrenton* (LUBA No. 2006-016, decided June 29, 2006: Goal 16 and OAR 660-012-0060 (Transportation Planning Rule)

None of these decisions requires a goal or administrative rule amendment.

Appellate Court Opinions

Between June 13 and July 24, 2006, the Department received 22 copies of recently issued opinions from the Court of Appeals. The Court affirmed all 22 LUBA decisions.

Opinions of Interest

- In *People for Responsible Prosperity, et al v. City of Warrenton* (LUBA No. 2006-016, decided June 29, 2006), LUBA affirmed the city's redesignation of 96 acres in Youngs Bay and the Columbia River Estuary from conservation to development to facilitate establishment of a liquefied natural gas terminal.
- In *Wal-Mart Stores, Inc. v. City of Bend* (LUBA No. 2006-040, decided July 19, 2006), LUBA affirmed the city's denial of application for a commercial subdivision and Supercenter in the "Golden Triangle" near the intersection of Highways 20 and 97 on the north side of Bend's UGB.
- In *Wal-Mart Stores, Inc. v. City of Oregon City* (LUBA No. 2004-124, decided July 19, 2006), LUBA affirmed the city's denial after the Court of Appeals reversed and remanded LUBA's prior remand and the Supreme Court denied review.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

There have been few developments to report. Most of the available grant fund has been obligated. Grantees are busy completing the projects. Most of the current activity in the department is devoted to processing requests for payments and a few amendments to agreements.

Federal Fund Coastal Management Grants

The Department of Land Conservation has been awarded a Coastal Zone Management Grant for FY06-07 from the Office of Ocean and Coastal Resources Management (OCRM) in NOAA for \$2,366,000. The grant was effective July 1, 2006. This amount is substantially the same as FY05-07.

Of this amount, \$663,520 is being directed to coastal local governments for three kinds of grants: 1) \$340,000 for planning assistance; 2) \$190,352 for technical assistance projects;

and 3) \$152,745 for 306A coastal access construction or acquisition projects (see Attachment B for details). An additional \$28,032 is available, but not yet awarded, for stormwater management projects. Coastal Grants Coordinator Diana Evans is working with coastal field staff Dave Perry, Laren Woolley and with Jeff Weber, the 306A grants manager, to complete the grants application process for the new grant year. NOAA OCRM had previously approved the five 306A projects as meeting federal guidelines.

Intergovernmental Agreements

DLCD has entered into a Memorandum of Agreement for Job Rotation Assignment with the Governor's Natural Resource Office. The Agreement assigns Jane M. Bacchieri, Coastal Permit Specialist, Coastal Division to the Governor's Natural Resource Office. The agreement was effective June 7, 2006 and will expire December 31, 2006.

The Governor's Office will reimburse DLCD for Jane's salary and other payroll expenses to include out-of-class salary due to change in classification for the duration of the job rotation. The primary purpose of the position is to manage the Governor's Willamette River Legacy program.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

One jurisdiction - Umatilla County - has completed periodic review since the last Commission meeting. The work program was finished not through completion of a plan update, but rather deletion of the final remaining task. Activity has been low overall. Attachment C shows all recent departmental activity.

2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. PLANNERS' NETWORK MEETINGS

DLCD hosted a Central Corridor Planners' Network Meeting at the Deschutes County Building in Bend on July 27. Planners from Bend, Madras, Redmond, Sisters, The Dalles, and Deschutes County attended, as well as a program administrator from the Central Oregon Intergovernmental Council. Rob Hallyburton, Lane Shetterly, Constance Beaumont, Mark Darienzo, Jan DeVito, Meg Fernekees, Gary Fish, Larry French, Gloria Gardiner, Stacy Hopkins, Jason Locke, Darren Nichols, Mark Radabaugh, John Renz, Steven Santos, Mara Ulloa and Doug White attended on behalf of the department.

Department staff provided an update on the Senate Bill 82 land use review effort, the Commission's policy agenda for the 2005-07 biennium, and updates on recent rule-writing efforts, the grant programs, the economic development planning team, and the Transportation and Growth Management Program. City and county representatives then discussed the issues that they are faced with. Main topics related to growth pressures in the region and related issues regarding transportation planning, urban growth boundary amendments, and Measure 37. Urban renewal, public facilities financing, and training were also topics of discussion.

Another Planners Network Meeting will be scheduled early this fall for planners located within the counties of Washington, Clackamas, Columbia and Multnomah. Since December 2005, the department has held Planners' Network meetings in La Grande, Roseburg, Salem, Bandon and Astoria.

B. TRANSPORTATION AND GROWTH MANAGEMENT (TGM)

Transportation and Growth Management (TGM) program staff at DLCD and ODOT are currently working with local governments around the state on projects for which grants were approved last year (in August 2005).

TGM staff at DLCD have lead responsibility for conducting TGM's three "community assistance programs:" Quick Response, Code Assistance and Education/Outreach. Each of these programs has recently selected additional projects for award. Quick Response projects are scheduled for LaGrande/Island City/Union County; Hood River, and Irrigon. Each of these projects involves detailed land use and transportation planning in response to a pending development proposal. The Code Assistance program will be working with the cities of Happy Valley, Mill City, Newberg, Madras, Irrigon and Merrill to prepare code audits or assist with code updates. The Outreach program has approved workshops for Jefferson and Ontario and is planning others in Nyssa, Vale, Umatilla and Newport.

Of special note, the TGM outreach program is leading the department's work to co-sponsor a smart growth workshop with the National, Oregon, and Central Oregon Associations of Realtors and Brooks Resources Corporation in Bend in October. The workshop will bring together more than 200 realtors and local leaders to hear regional and national experts share ideas about how Central Oregon communities can expand housing, economic, and transportation choices through smart growth. The conference will be held on October 18.

C. TPR RULE AMENDMENTS

The Commission adopted proposed amendments at its June 29 meeting in Pendleton. The adopted rules were filed with the Secretary of State's office on July 14 and are now in effect.

On August 15, the Joint Subcommittee of LCDC and the Oregon Transportation Commission (OTC) will meet to discuss whether to recommend additional amendments to deal with the exceptions threshold issue arising out of LUBA and Court of Appeals decisions regarding the Newberg-Dundee Bypass.

D. OREGON HIGHWAY PLAN TESTIMONY

On July 19, 2006, LCDC Chair John VanLandingham and Director Lane Shetterly testified before the Oregon Transportation Commission (OTC) in support of the department's request that the Oregon Highway Plan, currently under review and consideration by the OTC, be amended to more directly address the state's interest in compact development. The OTC expressed support for the policy direction of the department's position, and authorized ODOT director, Matt Garrett, to work with Director Shetterly to evaluate options for additional language to be included in the Plan.

E. COASTAL ENERGY FACILITIES PLANNING AND ASSESSMENT

Coastal staff are very involved in two major coastal energy facility issues:

Liquefied Natural Gas (LNG)

Dale Blanton, Federal Affairs Coordinator, has worked closely with the Department of Justice and the Department of Energy to represent the Coastal Zone Management authorities of the Department in the siting of several import facilities for Liquefied Natural Gas (LNG), one at Bradwood on the Columbia River in Clatsop County, one on the Skipanon River in Warrenton in the Columbia River estuary, and a third at Jordan Cove in Coos Bay. These are extremely complex projects with the potential for significant effects on coastal communities and coastal environment. These issues were made even more complicated by the passage of the federal Energy Policy Act of 2005 which gave exclusive siting authority for LNG facilities to FERC, the Federal Energy Regulatory Commission, while at the same time retaining coastal states' authority under the federal Coastal Zone Management Act to review federal licenses and activities for consistency with state coastal management policies, which in this case are the statewide planning goals, the Clatsop County plan, and other authorities. The Director and the Coastal Program Manager, Bob Bailey, have also been closely involved in discussions of these issues with DOJ, ODOE, and the Governor's staff. Bob Bailey is now chairing a Working Group through the Coastal States Organization to develop coordinated responses among coastal states on FERC/CZMA issues.

Ocean Wave Energy Development

Greg McMurray, Marine Affairs Coordinator, has participated in several workshops and meetings relative to proposals for ocean wave generation facilities along the coast. Not only are the issues of siting and development complex, the process for doing so will likely involve a number of state agencies and federal agencies such as FERC through a process that has not been determined and is legally unclear at this point. Researchers at Oregon State University have been working on this technology for several years but private sector interest is increasing dramatically. Eventually, it is likely that the Ocean Policy Advisory Council will provide the Governor and agencies with policy advice on a regulatory process for this technology.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

The department recently hired two compensation claims specialists two work in the Measure 37 Claims Services Division. Dixie Bryant has extensive experience in the insurance industry, as a claims processor and a manager. Tawni Bean comes to the department after 11 years at the Oregon Economic and Community Development Department (OECDD). At OECDD she most recently was performance measures coordinator. Both Dixie and Tawni are highly energetic and competent, and with the training and assistance of existing staff, are already pulling their fair share of claims.

Jeannine Rustad also recently joined the department with the Measure 37 Claims Services division. Jeannine will be reviewing claims, working with DOJ on specific issues, such as providing assistance to local governments in producing findings for land use application – post-M37 waiver(s), and reviewing land use permits for consistency with state waivers. Jeanine has eight years of experience in real estate and land use law in the Washington, D.C. area. She will be finishing her second year at Portland State University in the Master of Urban and Regional Planning program and recently interned at Metro.

B. RECRUITMENTS

The recruitment for a new Manager for the Planning Services Division closed on June 30, 2006. The recruitment is to fill the management position recently vacated by Ann Beier. The department expects the interview process to run through August with an anticipated hire date by mid-September 2006.

The department continues to recruit for a number of positions in the Measure 37 Claims Services division. The recruitment for approved Planner 3 positions remains open (until filled). The department also recently established an open recruitment (until filled) for Program Analyst positions. Both recruitments will be used to hire qualified compensation claims specialists for Measure 37 claims. The department also anticipates recruiting in the near-term for a number of administrative positions within the division.

Prior to the Commission meeting the department anticipates hiring for the position of Flood Map Modernization GIS Specialist (ISS-5). This position is limited-duration and is expected to extend through June 30, 2007. The position is stationed at the department's main office in Salem. This open competitive recruitment closed on July 10, 2006. Initial interviews were held July 18, 2006.

The recruitment for the Coastal Permit Specialist (Natural Resource Specialist 3) in the Ocean and Coastal Services Division closed on Friday July 14, 2006. The recruitment is to fill behind Jane Bacchieri who is now working in the Governor's Natural Resources Office on the Willamette River Legacy project. The Coastal Permits Coordinator is a very fast-paced and important position to ensure that local, state, and federal approvals for coastal projects and permits are coordinated and are supported by findings. The Department hopes to fill the position by August 15.

Finally, the department is recruiting for the Accountant 1 position in the Operations Services Division. The department anticipates an approximate hire date occurring in August 2006.

C. DEPARTING EMPLOYEES

Effective on July 15, 2006, Randy Nelson resigned his position as an Accountant 1 with DLCD.

D. 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.
- Ongoing Legislator Brown Bag Lunch Forums
- Newberg Rotary Club (Newberg, July 5)
- Meeting with Lincoln County Commissioner Terry Thompson about water dependent zoning (Newport, July 17)
- Real Estate Development Conference (Portland, July 20)
- Task Force on Land Use Planning Retreat and Meeting (Lincoln City, July 23 & 24)
- Central Oregon Planners Network Meeting (Bend, July 27)
- Oregon Mayors Association (Newport, July 29)
- Governor's Economic Revitalization Team Director's Field Trip (Eastern Oregon, August 1)
- House Interim Committee on Land Use (Salem, August 2)
- State and County Assessors Conference (Salem, August 3)
- Bradwood Landing Liquid Natural Gas Open House (Knappa, August 3)
- Public Commission on the Oregon Legislature Process Subcommittee (Salem, August 8)

E. TRAINING

Gail Churchill, purchasing coordinator for the department, continues to work toward a Oregon Procurement Basic Certification. She anticipates testing for the certificate during

the fall of 2006. This certification illustrates the department's continued efforts toward fiscal accountability.

Dan Sproule, Information Resources Specialist 4, will be trained in Access database systems during the fall of 2006.

Managers, the department's HR coordinator and department union representatives participated in a management and labor issue training activity presented by Tom Perry, Labor Specialist of Human Resources Services Division at the Department of Administrative Services, and Tim Pfau, Labor Representative from AFSCME.

4. LEGISLATIVE INTERIM UPDATE

A. LEGISLATIVE BROWN BAG FORUMS

The department invites legislators to a monthly "brown bag lunch" to discuss land use issues that may be of interest to legislators. None of these sessions has occurred since the last director's report. The department's next legislative brownbag is scheduled for Thursday, August 3rd.

B. ANNEXATION WORKGROUP

SB 887 established an informal workgroup to discuss annexation issues and report to the interim House Land Use Committee. The workgroup includes cities, counties, special districts and other interest groups. Legislators are not members of the group, and DLCDC is not named as a participant. The legislatively established "SB 887 Annexation Work Group" has met three times, and is scheduled to meet one more time on July 31, 2006. Following that meeting the workgroup will issue a report to the House Interim Committee on Land Use for consideration at the Interim Committee's meeting on August 2, 2006. In general, issues of annexation do not involve the department. However, statewide annexation requirements are important to the implementation of LCDC's statewide growth management and public facilities policies. As such, the department is monitoring the progress of the SB 887 Annexation Workgroup.

5. LCDC POLICY AND RULEMAKING UPDATES

Except for the UGB Amendment Rules (see discussion below), LCDC has completed all the rulemaking listed in the Commission's 2005-2007 Policy Agenda. However, the department will be proposing one additional "housekeeping" rule change, described in subsection B, below. The department will propose this amendment at the LCDC meeting scheduled for October 4-6, 2006.

A. MINERAL AND AGGREGATE CONSENSUS GROUP

This group was appointed by the Governor to identify issues, obtain data about mining on farmland, and explore consensus regarding future legislation and/or amended statewide

land use rules to reduce aggregate and farmland conflicts. The group did not meet since the last director's report, but a subcommittee of the group is scheduled to meet on July 24. The department is not a member of that subcommittee, but is monitoring progress and will report if there are any issues that arise as a result of the July 24 meeting. The subcommittee is discussing a possible new process for aggregate mining approvals.

B. UGB AMENDMENT PROCESS WORK GROUP

On July 28, the Commission held its first of two public hearings on the proposed rules – the second hearing, and possible adoption, is scheduled for October 5, 2006, at LCDC's Bend meeting. The workgroup met on July 17 to discuss comments received at the first public hearing, and to discuss further refinements to the rule proposal. The workgroup agreed to meet two or three more times before the October 5 LCDC hearing (see additional meetings information at the following link to the DLCD website:

http://www.oregon.gov/LCD/rulemaking.shtml#UGB_Rulemaking).

C. TRANSPORTATION PLANNING RULE AMENDMENTS

The Commission adopted proposed amendments at its June 29 meeting in Pendleton. The adopted rules were filed with the Secretary of State's office on July 14 and are now in effect.

On August 15, the Joint Subcommittee of LCDC and the Oregon Transportation Commission (OTC) will meet to discuss whether to recommend additional amendments to deal with the exceptions threshold issue arising out of LUBA and Court of Appeals decisions regarding the Newberg-Dundee Bypass.

D. ZONING OF EXCEPTION AREAS RULE

The Commission approved initiation of a "housekeeping" update to OAR 660-004-0018 at its June meeting. There was insufficient time to get notice published to allow the matter to be placed on the August agenda. Staff anticipates it will be on the October agenda.

E. WATER RELATED PROCESS IMPROVEMENT TEAM

The Department of Consumer and Business Services (DCBS) has convened a group of agencies, including DLCD, to work toward streamlined waterway permit procedures: the Water Related Process Improvement Team (WRRPT). A subcommittee of that team has been convened by the Department of Geology and Mineral Industries (DOGAMI) to respond to a budget note regarding agency comments to local governments regarding aggregate mining (this note was attached to several state agency budgets, including DLCD's budget). Bob Rindy is attending the subcommittee meetings for the department. The sub-committee has met five times to discuss a response to the budget note, and is working on a "memorandum of understanding" (MOA) among agencies involved in aggregate permit hearings. The MOA would include a process for agencies commenting to local governments on proposed plan amendments to allow aggregate mining. The subcommittee has also agreed to consider a draft legislative concept, if necessary, to establish a pilot program for a streamlined comment procedure. In addition to DOGAMI,

agencies involved in this process include: The Department of Agriculture (ODA), Department of Environmental Quality (DEQ), Department of Water Resources (WRD), Division of State Lands (DSL), State Parks and Recreation Department, and the Department of Fish and Wildlife (ODFW). Laura Leshner of DCBS chairs the subcommittee.

6. TASK FORCE ON LAND USE PLANNING UPDATE (SENATE BILL 82)

The Task Force on Land Use Planning (the Task Force) met on July 23 and 24, 2006 in Lincoln City. In preparation for the meeting, staff worked with a subcommittee on outreach to individuals and organizations regarding what they thought are major land use issues that the Task Force should address. Over 40 organizations and government agencies responded to the request for issues, and over 3,000 Oregonians took a web-based survey (see Attachment D). These materials, along with a summary of visioning documents from local, regional, and state agencies and organizations are available on the Big Look website at (see Attachment E): <http://www.oregon.gov/LCD/BIGLOOK/index.shtml>.

Two of the major outcomes of the Task Force meeting were: (1) approval of a vision statement for the Task Force and the Big Look, and (2) identification of major issue questions.

The final draft vision statement for the Task Force and the Big Look is to:

- Be forward thinking
- Support vibrant communities
- Create a sustainable, driven economy
- Accommodate change
- Preserve and enhance quality of life
- Engage the public in productive ways, not just process

The Task Force approved the following draft issues, stated as questions, and assigned a work group to conduct Phase II research activities (workgroup members are in parenthesis, the chair is the first name with an asterisk):

- What are the appropriate roles of state and local governments in land use in Oregon? (*Judie Hammerstad, Nikki Whitty, Mike Thorne)
- What is the appropriate role of citizen involvement in land use? (*Gretchen Palmer, Jill Gelineau, Judie Hammerstad)
- What role should land use planning play in enhancing Oregon's economy now and in the future? (*Steve Clark, Nikki Whitty, Cameron Krauss, Ken Bailey)
- What are the most effective tools to manage population growth to achieve community goals? (*Ken Bailey, Gretchen Palmer, Steve Clark, David Bragdon)
- How should Oregon's system of infrastructure, finance, and governance influence land use? (*David Bragdon, Wes Hare, Mike Thorne)

- How can the land use process appropriately address the benefits and burdens that fall on individual land owners and the general public? (*Jill Gelineau, Cameron Krauss, Wes Hare)

Staff distributed a press release announcing the six issues (see Attachment F) on Wednesday, July 26, 2006.

The next meeting of the Task Force is August 18 in Salem.

ATTACHMENTS

- A. Memo regarding *Wetherell v. Douglas County*
- B. FY06-07 Coastal Zone Management Grants to Oregon Coastal Governments
- C. Periodic Review Tasks Under Review
- D. Task Force on Land Use Planning Issue Identification by organizations and government agencies
- E. Task Force on Land Use Planning Results of web survey