

September 19, 2005

TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director
SUBJECT: **Agenda Item 10, Sept. 28-30, 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.

Department participation in appeals

Between July 9 and August 31, 2005, the Department received notice of 25 appeals filed with LUBA.

LUBA opinions

Between July 9 and August 31, 2005, the Department received copies of 30 recently issued LUBA opinions. Of these, LUBA dismissed 6, affirmed 17, remanded 7, reversed 0, and transferred 0 petitions to circuit court.

Eighteen of these decisions concern the application or interpretation of a statewide planning goal or LCDC administrative rule, as follows

A. Newberg-Dundee Bypass cases

- a. *1000 Friends of Oregon v. City of Dundee*, LUBA no. 2004-144, and *Columbia Empire Farms v. City of Dundee*, LUBA no. 2004-145 (Goals 2, 8 & 10; OAR 660-012-0035 & -0040).

- b. *1000 Friends of Oregon v. City of Dayton*, LUBA no. 2004-146 (Goals 3, 11, & 14).
- c. *1000 Friends of Oregon v. City of Newberg*, LUBA no. 2004-168, and *Charlie Harris v. City of Newberg*, LUBA no. 2004-174 (Goals 9 & 10, OAR 660-012-0040).
- d. *1000 Friends of Oregon v. Yamhill County*, LUBA nos. 204-169, 2004-214, and 2004-215; *Columbia Empire Farms v. Yamhill County*, LUBA nos. 2004-171, 2004-172, and 2004-173; *Fair Housing Council v. Yamhill County*, LUBA nos. 2004-180, 2004-194, and 2004-197 (Goals 2, 5, 6 & 15; OAR 660-004-0020 and -0022, OAR 660-012-0015, -0020, -0060, and -0070).

B. Other cases

1. *Patterson v. City of Independence*, LUBA no. 2004-220 (OAR 660-014-0060 and -0070)
2. *Wood v. Crook County*, LUBA no. 2005-041 (Goals 3, 11 and 14; OAR 660-004-0040, OAR 660-033-0020).
3. *Cutsforth v. City of Albany*, LUBA no. 2005-043 (Goals 12 and 14).
4. *Moreland v. City of Depoe Bay*, LUBA no. 20005-062 (Goal 17).

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

Appellate court opinions

Between July 9 and August 31, the Department received copies of 16 recently issued opinions from the Court of Appeals. Of interest may be appeals of Metro's UGB expansion for industrial lands. All three were affirmed by the Court of Appeals:

1. *City of Sandy v. Metro*, Court of Appeals, July 6, 2005;
2. *City of Hillsboro v. Metro*, Court of Appeals, March 15, 2005;
3. *Clackamas County v. Metro*, Court of Appeals, March 15, 2005.

Also of note was the Court of Appeals decision in *West Linn v. LCDC*, Sept. 8, 2005, affirming in part and remanding in part the 2003 LCDC decision on the Metro UGB expansion. See the report under Agenda item 4.b for more information.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

A Grants Advisory Committee meeting has been scheduled for October 10. With the committee's recommendation, staff will prepare a 2005-07 Grants Allocation Plan for Commission consideration at the November-December meeting.

The General Fund Grant Program is currently processing close-outs and making final payments for grants from the 2003-05 biennium while simultaneously accepting applications for Technical Assistance and Periodic Review grant projects to be completed in 2005-07. The Grants Program Administrative Specialist is busy. The advisory committee has already made its recommendations on Technical Assistance and Periodic Review grants, and the department felt it was unreasonable to wait until the December Commission approval of the Grants Allocation Plan to begin offering these grants. Other grant programs funded through the General Fund will await a committee recommendation before being offered, and Commission approval of the plan before making payments.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

Periodic review activity is very low. A summary of activity is provided in Attachment A.

D. STATUS OF PLAN AMENDMENTS RECEIVED

A quarterly summary of Post-Acknowledgment Plan Amendments (PAPAs) received by the department is set forth in Attachment B. PAPAs are changes to an acknowledged comprehensive plan or implementing ordinance, or a plan or zoning map, completed by local governments outside of the periodic review process. DLCD may provide technical assistance to local governments in the development of PAPAs and the department may review and/or comment on a PAPA. Any appeal of a PAPA goes to LUBA.

The first page of Attachment B summarizes submittals for the first two quarters of 2005. A submittal may include multiple amendments. The reported adoptions include submittals that may have been submitted in a prior or the current quarter.

The second page shows activity over the last several years by quarter and annually. The third page displays DLCD participation for the last 6.5 years. "Y=Participated" and "YA=Advisory Participation" on the last page mean that the proposal was reviewed by department staff, not that the department submitted comments. Those that received comments are shown under the three middle columns, categorized by the medium of the response.

Taken together, the three types of participation yield the following results (comments/no comments):

1999 – 115/419
2000 – 137/339
2001 – 184/322
2002 – 82/338
2003 – 149/209
2004 – 104/284
2005 – 63/133 (first two quarters)

2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. COASTAL DIVISION ACTIVITIES

Mouth of Columbia River Sediment Management Project

In mid-September, the Department's Coastal Management Program (OCMP) celebrated successful completion of a significant project at the mouth of the Columbia River that sets the stage for bi-state efforts to protect the south jetty, Clatsop Spit, and beaches along the Washington coast from erosion. This 2005 demonstration project was designed to test "enhanced disposal" on a very limited basis (30,000 cubic yards) in the nearshore environment where disposal usually does not occur. A larger project is planned for summer 2006 with a long-term goal of routine disposal in the nearshore environment to rebuild sand supplies that once buffered the coastline.

Over the past two years the OCMP has provided funding support to the National Policy Consensus Center (NPCC) at Portland State University to facilitate this project for the Lower Columbia Solutions Group (LCSG) and funding to the Institute for Natural Resources (INR) at Oregon State University for scientific assessments of the project and its effects. The OCMP also worked directly with the Port of Astoria to prepare federal permit applications for the project and with the Governor's office, the Corps of Engineers, the US EPA, NOAA Fisheries, and the US Fish and Wildlife Service to gain approval. The permit was granted with only hours to spare before the scheduled departure of the Corps dredge *Essayons* from Astoria.

Thus, OCMP Federal Consistency Coordinator Dale Blanton spent two days aboard the *Essayons* to observe operations as it worked in the Columbia River mouth to dredge and disperse six loads of material south of the South Jetty off Clatsop Spit. The project was designed to enable the Corps to test an "enhanced method" of disposal to try to achieve a more uniform thin layer of deposition. DLCD also helped to sponsor monitoring of the physical and biologic effects of disposal that was carried out by Science Applications International, Inc., and by Parametrix Inc. The weather cooperated and the project was successfully carried out by Thursday, September 15. Specific results of the project will be known when the monitoring data is analyzed but preliminary observations indicate that the demonstration was successful.

Planning for a larger project in summer 2006 will begin immediately and the OCMP will continue to be involved with the LCSG, NPCC, and INR in this important work to protect key coastal infrastructure and the economic networks it supports. The OCMP is also working with the Governor's staff to gain Congressional support for long term funding for the project.

Amendments to the Department of State Lands (Coordination Agreement)

The Department of State Lands (DSL) announced that it is inviting review and comments on a proposed update to the agency's state agency coordination (SAC) agreement. DSL's current SAC was approved by LCDC about fifteen years ago. There are no statute or rule requirements requiring agencies to update these agreements. Several agencies have made

minor amendments to approved SAC agreements, but this is the first time an agency has proposed a complete update of the agreement. Retired DLCD manager Jim Knight was retained on contract to assist DSL in this project. DSL is required to submit the draft to DLCD for review and comment. DLCD Coastal Staff provided some review and comment during the preparation of the document, and will be preparing formal comments for presentation to DSL at its final hearing in October.

B. TRANSPORTATION AND GROWTH MANAGEMENT PROGRAM

The Transportation and Growth Management (TGM) program has issued two new publications:

School Siting

At the Commission's April 2005 meeting, the Community Planning Workshop from the University of Oregon presented research findings from a Transportation and Growth Management (TGM) project on school siting in Oregon communities. The findings pointed to a variety of issues related to siting schools in urban areas that result in neighborhood, walkable schools. The UO researchers found a general lack of coordination between municipal and school district planners. Nevertheless, examples of innovative school projects are emerging, as outline in the report.

A copy of the final report, "Planning for Schools & Liveable Communities," is available via the TGM publications website: <http://www.oregon.gov/LCD/TGM/publications.shtml>

Model Code

The TGM program recently completed an update of the model development code it has provided to communities since 1999. The update continues the practice of recommending development code provisions that advance "smart development" principles by integrating land use and transportation planning. This version of the model code reflects lessons learned from use of the old model code, new practical techniques used by planners, and changes in land use law.

The "Model Development Code & User's Guide for Small Cities, 2nd Edition" also is available via the TGM publications website.

Questions or comments about these TGM publications, should be directed to Constance Beaumont at constance.beaumont@state.or.us, (503) 373-0050 ext. 277, or Steve Oulman at steve.oulman@state.or.us, (503)373-0050 ext. 259.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

The department has secured a lease for an office in La Grande and Darren Nichols, currently assigned to Measure 37 work, will become the Northeast Oregon Regional Representative in October.

B. 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 participation with a Metro workgroup regarding Measure 37.
- Oregon County Counsel Association (Seaside, August 10)
- Medford Day Trip to Meet with Hank Williams, Mayor of Central Point and *Mail Tribune* Editorial Board (Medford, August 12)
- Assessor's Association (Eagle Crest, August 16)
- Real Estate and Land Use Section of the Oregon State Bar (Eagle Crest, August 19)
- Federal Transit and Federal Highway Administration (Vancouver, WA, August 23)
- Portland Rotary Club (Portland, August 30)
- Women's Council of Realtors (Portland, September 7)
- Oregon Planners Institute (Eugene, September 15)
- National Conference of Newspaper Editorial Writers (Portland, September 16)

C. TRAINING

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

The department offered program staff the opportunity to attend this year's Oregon Planning Institute (OPI), an annual land use planning conference held jointly by OPI and the Oregon Chapter of the American Planning Association (OAPA). 23 department staff attended. The director and 3 other department staff were presenters for some of the items on the conference agenda. DLCD staff (Geoff Crook) served on the committee arranging the conference agenda.

D. MANAGEMENT RETREAT

Department managers and select staff held a management planning retreat at Silver Falls Conference Center on August 17, 2005. The retreat involved planning for budget, staffing and program issues for the coming biennium. The management team continues to meet regularly to follow up on the planning retreat.

4. LEGISLATIVE INTERIM UPDATE

A. INTERIM LEGISLATIVE ACTIVITIES

The department revised its published report on 2005 legislation to reflect that HB 3463 was vetoed by the Governor on September 2, 2005. This bill provided that a motor sports race track that existed on or before January 1, 1969, and that has been in continuous use without interruption or abandonment since that date, is a permitted use in an exclusive farm use zone. The bill also declared an emergency and would have been effective on passage. In vetoing the bill, the Governor declared that "there is a long-established mechanism in our land use system that allows for appropriate pre-existing uses to continue on an exception basis. It is a mechanism that has worked. To grandfather, by legislation, existing uses on a property by property basis is inherently unfair to those who have acted in good faith under existing law."

The department's revised land use legislation report is on the DLCD website at <http://www.lcd.state.or.us/LCD/docs/legislative/landusebills2005.pdf>

Department staff met to discuss the legislative tracking and briefing system used in monitoring the 2005 legislative session. Some minor adjustments were recommended, as well as further discussions with other agency legislative coordinators and DAS regarding fiscal impact statements for pending legislation. These statements consumed a great deal of department staff time in regard to bills that did not clearly affect the land use program. As such, the department will be exploring ways to reduce this workload.

5. LCDC RULEMAKING WORKGROUP UPDATES

A. RURAL COMMERCIAL AND INDUSTRIAL WORKGROUP

This group has not met since the last Commission update.

B. UGB AMENDMENT PROCESS WORK GROUP

This workgroup is on hold while awaiting an LCDC Policy Agenda decision as to whether it should continue its work in developing safe harbor UGB rules.

C. GOAL 9 RULE MAKING WORK GROUP

This group has not met since the last Commission meeting. As directed by the Commission, an amended rule making notice and fiscal impact statement has been filed with the Secretary of State, and the rule will be presented to the Commission for adoption at its meeting on Nov. 30-Dec. 2, in Medford.

D. TRANSPORTATION PLANNING RULE

Information on this rulemaking activity will be presented separately under Agenda Item 6.

6. BALLOT MEASURE 37 UPDATE

Information on department activities relating to Ballot Measure 37 will be covered separately under Agenda Item 11.

Attachments

- A. Periodic Review activity
- B. Post Acknowledgement Plan Amendment Totals