

September 20, 2006

TO: Land Conservation and Development Commission  
FROM: Lane Shetterly, Director  
SUBJECT: **Agenda Item 4, October 4-6, 2006 LCDC Meeting**

## **DIRECTOR'S REPORT**

### **1. INFORMATION UPDATES**

#### **A. PARTICIPATION IN 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.

##### **1) Department participation in appeals**

Between July 25 and September 13, 2006, the Department received notice of 35 appeals filed with LUBA.

The department is participating in one of these appeals, *DLCD v. Umatilla County*, LUBA No. 2006-152. The department contests the county's approval of a Goal 14 exception and zone change for 18.3 acres currently zoned Light Industrial and Rural Residential to allow development of "large-format" commercial uses.

##### **2) LUBA opinions**

Between July 25 and September 13, 2006, the Department received copies of 51 recently issued LUBA opinions. Of these, LUBA dismissed 25, affirmed 20, remanded 4, reversed 1, and transferred 1 petition to circuit court.

One of these decisions concerns the application or interpretation of a statewide planning goal or LCDC administrative rule:

- In *Todd v. City of Florence*, LUBA No. 2006-068, LUBA remanded the city's decision to approve an exception to Goal 11:Public Facilities to allow extension of sanitary sewer service to tribal land outside the UGB. (Other rules cited: OAR 660-004-0020(1) & (2), 660-004-0022(1), 660-011-0060(9).)

None of these decisions **requires** a goal or administrative rule amendment. However, a concurring opinion in the *Todd* case suggested amendment of OAR 660-004-0020(2)(B) so that when, as in this atypical case, state land use laws do not apply to the use of the rurally-located property, it is clear that a Goal 14 exception for the proposed use of the land is not needed in addition to the Goal 11 exception to extend urban services.

### 3) Appellate court opinions

Between July 25 and September 13, 2006, the Department received 17 copies of recently issued opinions from the Court of Appeals. The Court affirmed all 17 LUBA decisions.

### 4) Opinions of note

- 16 of the 25 LUBA dismissals were challenges filed in 2000 to local Measure 7 claim filing procedure ordinances.
- 9 of the 16 Court of Appeal opinions reversed and remanded LUBA's affirmations of Yamhill County's decision on the Newberg-Dundee Bypass.
- On remand from the Court of Appeals, LUBA again affirmed the County's decision in the 9 Newberg-Dundee bypass appeals. *1000 Friends of Oregon, et al v. Yamhill County*, LUBA Nos. 2004-169, 2004-171, 2004-172, 2004-173, 2004-180-, 2004-194, 2004-197, 2004-214 and 2004-215 (August 18, 2006).
- In *Timberline Baptist Church v. Washington County*, LUBA No. 2006-058 (August 10, 2006), the county approved a church and day-care center but denied a private school on 7.05 acres zoned AR-5 adjacent to the City of Sherwood's UGB, which the church, founded and located in Sherwood, bought in 2004. Ross Day and Oregonians in Action represented the church in appealing on the basis of an alleged violation of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). LUBA agreed with the county that denial for the school was not a "substantial burden on religious exercise" under RLUIPA.

## 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's Coastal Grants Coordinator has processed all but a small number of planning assistance and technical assistance grants to local governments for FY06-07. She has also closed out almost all local government planning assistance grants from FY05-06 and submitted a close-out report to NOAA for the FY03-04 federal grant to the Department, which was extended through June, 2006. A grant offer has been made to Dunes City for \$17,000 in federal Coastal Nonpoint Pollution Control (stormwater management) funds. Dunes City intends to update city zoning and development ordinances to address stormwater runoff pollution, which of great concern since the drinking water for most city residents comes from Woahink and Siltcoos Lakes. The city will contract for technical assistance from the Lane Council of Governments to work with city volunteers to prepare ordinance revisions that are technically sound and meet the interests of city residents. The city intends to focus on adding "best management practices" to address erosion control, storm water runoff, vegetative stabilization, reducing impervious surfaces and use of phosphorus based fertilizers within the city watershed.

The Coastal Program is providing federal funds to support the services of a facilitator for the Ocean Policy Advisory Council public outreach meetings to hear public comment on the Governor's proposed National Marine Sanctuary.

### **C. PERIODIC REVIEW WORK TASKS/PROGRAMS**

One jurisdiction — Josephine County — has completed periodic review since the last Commission meeting. Overall, activity has been low. Attachment A shows all recent departmental activity.

### **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 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 2006. 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 last page displays DLCD participation for the last 7½ years. "Y=Participated" and "YA=Advisory Participation" on the third 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 – 87/234

2006 – 45/177 (through two quarters)

## **2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES**

### **A. PLANNERS' NETWORK MEETINGS**

A network meeting will be held in Portland for the greater Metro area in early November. A Coastal Planner network meeting will be held in Newport on October 20, 2006

### **B. TRANSPORTATION AND GROWTH MANAGEMENT (TGM)**

Outreach workshops are scheduled for Nyssa, Vale and Ontario in October. In each case, the workshops will focus on land use, urban design, and transportation planning concepts that enhance transportation choices and bolster downtown revitalization efforts.

In a follow-up to its earlier work on school siting issues (see [www.oregon.gov/LCD/TGM/walkableschools.shtml](http://www.oregon.gov/LCD/TGM/walkableschools.shtml)), TGM has collaborated with the Oregon School Boards Association on a special publication featuring schools designed and located to increase the percentage of students who can walk or bike to school. The publication will reach Oregon school officials in September – shortly before National Walk-or-Bike-to-School Day (October 4). Projects featured in the publication include: the TGM-funded Ash Creek Trail, which will make it safer for students in Independence and Monmouth to walk to school; Baker City's Leo Adler Parkway; and Bend's Ensworth Elementary School, whose smaller site and proximity to neighborhoods allow the school to serve as a center of community and enable most students to walk to school.

### **C. COASTAL ENERGY FACILITIES PLANNING AND ASSESSMENT**

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

#### **Liquefied Natural Gas (LNG)**

Coastal staff and the Director met recently with the representatives of the private company proposing to develop an LNG import terminal at Bradwood Landing on the Columbia River about 30 miles upstream from the mouth. The applicants have completed the pre-

filing stage with FERC, the Federal Energy Regulatory Commission, and are in the formal filing process, including preparing their required Coastal Zone Management Act (CZMA) federal consistency certification documents. The applicant and project team has met with the Department to discuss state planning requirements and provisions of the state's approved coastal management program that are applicable to their preliminary proposal.

Coastal staff are also involved in the proposal for an LNG import terminal and major pipeline for the Jordan Cove project in Coos Bay that is currently in the FERC pre-filing process. The Jordan Cove project includes a proposed 230 mile pipeline across the coast range to its connection to the interstate pipeline system near Malin in Klamath County (Williams Pacific Connector Gas Pipeline). The Federal Consistency Coordinator met in September on-site with company officials, other state and federal agency staff, and staff from the Oregon International Port of Coos Bay. Coastal staff continue to monitor comments received by FERC for the project.

Department involvement in these Liquefied Natural Gas projects is guided by provisions of the Energy Policy Act of 2005 and the Coastal Zone Management Act. The coastal management program will eventually review the applicant's federal consistency certification and supporting documents after providing an opportunity for public comments. Based on this review and public input, DLCD will make a state decision regarding consistency of the proposed project with the "enforceable policies" of the coastal management program. Enforceable policies include the statewide planning goals; acknowledged city and county comprehensive plans and land use regulations; and state agency regulatory authorities (e.g. DSL, DEQ, ODFW, WRD). The commission may become involved because LCDC rules provide an opportunity for an appeal of a department federal consistency decision to the commission. Federal law provides an appeal opportunity to the Secretary of Commerce whether or not an appeal is filed with the commission.

### **Ocean Wave Energy Development**

Coastal staff met with Governor's Office staff to discuss regulatory issues for streamlining the permit process for a wave energy research park proposed for the nearshore ocean near the mouth of the Umpqua River. Because this is the first project to be considered in the state, there are a number of issues to be addressed. Because of the Coastal Program's unique coordination responsibilities, it is likely that the Department will play a major role in the process of reviewing and approving ocean wave energy facilities.

#### **D. FOUR MINI WEBSITES CREATED UNDER DLCD UMBRELLA**

In an effort to keep the department's online content easily accessible, DLCD has added three new mini websites in the past four months. The minisites were created for:

- Measure 37: <http://www.oregon.gov/LCD/MEASURE37/index.shtml>
- The Big Look: <http://www.oregon.gov/LCD/BIGLOOK/index.shtml>
- Economic Development: <http://www.oregon.gov/LCD/ECODEV/index.shtml>
- Ocean Policy Advisory Council: <http://www.oregon.gov/LCD/OPAC/index.shtml>

The minisites allow users to view more information in a format consistent with DLCD's home page. The previous websites for each of these programs consisted of one long webpage, forcing users to scroll down the page to search for embedded information. For example, there are currently 20 links on the Measure 37 home page, which lead users to pages as broad as "Draft Staff Reports," or as detailed as "Filing Claims with the State." Both the Big Look page and the OPAC page serve as valuable public information access points for documents such as agendas, meeting notices, and background papers. Staff can post these documents for interested parties and participants, which eliminates the need for and expenses of duplicating and mailing paper copies.

#### **E. OREGON COASTAL ATLAS PART OF INTERNATIONAL WORKSHOP**

Staff from the Coastal Services Division recently participated in a week-long workshop at the University of Cork, Ireland, on coastal-marine information systems. The Department's Coastal Program has partnered with Oregon State University to build a variety of information management tools for the Oregon Coastal Atlas, funded by a major grant to OSU from the National Science Foundation. Investigators from OSU, working with colleagues at the University of Cork, were subsequently awarded a special NSF grant to develop a series of international workshops on marine and coastal information systems. Coastal Atlas staff were invited to participate in the first workshop in Cork, with financial support from the NSF grant. Programs from seven countries were represented. A second workshop will be held in Corvallis in July, 2007.

#### **F. FEDERAL COASTAL PROGRAM EVALUATION TEAM VISIT**

A program evaluation team from the National Oceanic and Atmospheric Administration (NOAA) will be in Oregon October 2-6, 2006, to evaluate Oregon's Coastal Zone Management Program. The team will meet during the week with DLCD staff and staff from a number of state and federal agencies and local governments and will tour coastal sites of interest between Newport and Astoria. This program evaluation process is conducted on a three-to-four year cycle. Oregon was last reviewed in summer, 2003 and received a very favorable review with only recommended, not mandatory, actions for improvement. The Department's response to these recommended actions is Attachment C.

### **3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION**

#### **A. NEW STAFF**

We are very pleased to welcome Linda Smith to the department. Linda is the department's new Accountant 1 with the Operations Services Division. Linda has extensive state accounting experience from the Department of Human Services and private payroll experience.

Rob Hallyburton has accepted a six-month job rotation to fill the Planning Services Division Manger position vacated by Ann Beier.

The Coastal Services Division is pleased that Jay Charland has arrived to fill the position of Coastal Permits Coordinator, replacing Jane Bacchieri who is on a job rotation in the Governor's Natural Resources Office. Mr. Charland is a 1998 graduate of the OSU Marine Resources Management Program and has extensive experience in coastal management in Oregon, at the federal level and for non-governmental organizations. He comes most recently from three years as the Coast Keeper for the Assateague Coast Trust on the Eastern Shore of Maryland.

## **B. RECRUITMENTS**

The department is preparing its recruitment for a new Office Specialist 2 for the Operations Services Division, to replace Theresa Kaminski. (See "Departing Staff," below.) This recruitment will be open competitive, and limited duration. The Community Services Division Manager position vacated by Rob Hallyburton has been offered in-house as a six-month "developmental" rotation. Interviews are in progress at the time of this report.

## **C. DEPARTING EMPLOYEE**

Theresa Kaminski, Operations Services Division Office Specialist 2, has left the department. The department wishes her well.

## **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
- Senate Natural Resources & Alternative Energy Committee Meeting (Newberg, August 14)
- National Conference of State Legislators (Nashville, August 15 – 16)
- Citizen Involvement Advisory Committee Meeting (Salem, August 17)
- Oregon Task Force on Land Use Planning (Salem, August 18 and Pendleton, September 18)

- Welcome Reception for Mike McCauley, League of Oregon Cities Director (Salem, August 18)
- Measure 37 State and Local Coordinating Meeting (Salem, August 24)
- Ocean Policy Advisory Council Meeting (Brookings, August 24 and 25)
- Meeting with Senator Schrader (Wilsonville, September 7)
- Meeting with Ray Naff regarding the Umatilla County Land Use Decision (Salem, September 8)
- Metro Policy Advisory Committee Meeting at Metro (Portland, September 13)
- Oregon Planners Institute (Eugene, September 14 and 15)
- “Democracy Talking” with Greg MacPherson (Portland, September 21)
- Westside Economic Alliance (Beaverton, September 28)
- League of Oregon Cities Annual Conference (Portland, September 29)
- Governor’s Economic Revitalization Team Agency Director’s Field Trip (Newport, October 2 and Tillamook, October 3)
- National Oceanic and Atmospheric Administration 312 Visit (Portland, October 2)

## **E. TRAINING**

Dan Sproule, Information Specialist 4 (IS4) with the Operations Services Division is finalizing his training in Access Databases. This training will assist the department’s database streamlining efforts.

Jeremy Gingell, Information Specialist 7 (IS7) and Dan Sproule (IS4) are attending the SUSE Linux Enterprise 10 Road-show in Portland on September 19, 2006. This opportunity provides networking and will provide our department firsthand knowledge of the direction Novell applications will be headed.

Jeremy Gingell will be attending Government Open Source Conference (GOSCON) on October 12 and 13, 2006. This training will provide the department an opportunity to partake in discussions of experts who are shaping the open source industry in the government sector.

Fiscal staff continues memberships in associations (e.g. Oregon State Fiscal Association) tied to their fields of expertise and assisting department efforts toward accountability.



A number of staff and managers attended the annual Oregon Planning Institute on September 14-15. Several staff also participated as panelists and moderators on a variety of topics, including smart design, the Big Look, UGB amendments, regional differences, and regional wetlands planning.

#### **4. LEGISLATIVE INTERIM UPDATE**

##### **A. LEGISLATIVE BROWN BAG FORUMS**

A regular legislative brown bag lunch forum was held at the department on September 6. It was attended by staff and several legislators, legislative candidates and legislative staff.

##### **B. ANNEXATION WORKGROUP**

In August 2, 2006, the Annexation work group established by SB 887 submitted a final report to the House Interim Committee on Land Use. The report is very thorough; it evaluates many aspects and issues concerning the annexation process, including its connection to land use planning in Oregon. The report is available on line at <http://www.orcities.org/Portals/17/A-Z/sb887annexation.pdf>.

#### **5. LCDC POLICY AND RULEMAKING UPDATES**

##### **A. MINERAL AND AGGREGATE CONSENSUS GROUP**

This group was appointed by the Governor to identify issues and obtain data about mining on farmland, and to explore consensus regarding future legislation and/or amended statewide land use rules to reduce aggregate and farmland conflicts. The full group has not meet since the last director's report, but a subcommittee of miners and farmers has continued to discuss ideas for possible legislative concepts. These ideas primarily concern the identification of a "bank" of alternative sites that are not on high-value farmland and would be available for mining.

##### **B. WATER RELATED PERMIT PROCESS IMPROVEMENT TEAM (WRPPIT)**

The department has been participating in a multi-agency effort to improve the efficiency and coordination of water related permits (i.e. removal fill permits processed by the Department of State Lands (DSL)). This multi-agency effort includes the Department of State Lands (DSL), the Department of Environmental Quality (DEQ), the Oregon Department of Fish and Wildlife (ODFW), the Department of Geology and Mineral Industries (DOGAMI), the Department of Land Conservation and Development (DLCDC), the Oregon Parks and Recreation Department (OPRD) and the Water Resources Department (WRD). The work is being coordinated through the Office of Regulatory Streamlining and responds to a legislatively adopted budget note attached to each agency's budget.

The recommendations of a working group have led to the development of a pilot program to be initiated in January of 2008 and continue through December 31, 2009 that will implement some of the group's recommendations. The pilot program is outlined in a

Memorandum of Agreement (MOA) that commits agencies to participate in the pilot. The primary commitment for DLCD is to provide guidance about DLCD program requirements to the applicant and DSL as needed and to identify projects that will require Coastal Zone Management Act federal consistency certification.

A subcommittee of the working group has continued to meet to respond to a related budget note regarding aggregate mining. Bob Rindy is attending the subcommittee meetings for the department. The sub-committee met September 18 and reached agreement on a conceptual MOA to coordinate agency response to plan amendment requests involving gravel mining. The MOA establishes a “pilot project” to test a method to combine agency comments for proposed aggregate sites.

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

The Oregon Task Force on Land Use Planning (the task force) met twice since the last LCDC meeting; August 18, 2006 in Salem, and September 18, 2006 in Pendleton.

In July, the task force identified six issue areas and developed work groups that are now framing these issues and developing tradeoffs between the different issues. In August, the meeting focused on the development of work plans for the work groups. Between the August and September meetings, five of the six work groups developed sub-questions. These questions were sent to approximately six to 12 organizations (many overlapped).

At the September 18, 2006 meeting, the task force learned about the Umatilla Go-Below decision. Lane Shetterly presented a staff report, and Tamra Mabbott, Umatilla County, Chris Figgins, property owner, and Kevin Porter, Oregon Wheat Growers League. Task Force members also spent significant time meeting in work groups and discussing work group activities and needed resources.

The next meeting of the Task Force is October 23 and 24 in Medford.

### **ATTACHMENTS**

- A. Submitted Periodic Review Tasks Under Review
- B. Plan Amendment Summary
- C. 2006 Oregon Coastal Management Program 312 Program Evaluation