

November 13, 2006

TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director
SUBJECT: **Agenda Item 13, November 30 – December 1, 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 September 14 and November 8, 2006, the Department received notice of 37 appeals filed with LUBA.

On September 5, 2006, the department filed a Notice of Intent to Appeal Yamhill County's approval of exceptions to Goals 3, 4, and 14, and comp plan and zoning amendments from Exclusive Farm Use to Recreational Commercial, to allow a luxury boutique hotel, spa, restaurant, and meeting facilities on approximately 12 acres of a 65.86-acre EFU parcel near Dayton in the Red Hills of Dundee (*DLCD v. Yamhill County*, LUBA No. 206-158). The Commission subsequently decided to withdraw the Notice and not pursue the appeal.

2) LUBA opinions

Between September 14 and November 8, 2006, the Department received copies of 34 recently issued LUBA opinions. Of these, LUBA dismissed 14, affirmed 12, remanded 7, reversed 1, and transferred no petitions to circuit court.

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

- *Mondalee Lengkeek, et al v. City of Tangent*, LUBA No. 2006-076, September 11, 2006 (*Lengkeek II*): **Goals 2, 10 and 14**. This is the second LUBA remand of the city's approval of a 54-to-84-acre UGB expansion for a City Councilor to develop a low-density subdivision. The appeal arose from the fact that the city's comp plan had an outdated population projection and buildable lands inventory.
Goals 2 and 10: In the first remand (*Lengkeek I*), LUBA held that the city could not rely on the buildable lands inventory provided by the applicant because it was not part of the city's comprehensive plan. In *Lengkeek II*, LUBA found that this defect had not been cured and remanded again.
Goal 14: In *Lengkeek I*, LUBA held that the city improperly relied on a population projection that was not part of its comprehensive plan. In *Lengkeek II*, LUBA upheld the city's reliance on a TSP population projection in the comp plan for approval of the second application on remand. LUBA did not agree with the appellants that the city must use a population projection explicitly prepared for a buildable lands inventory or UGB amendment. (The city has provided notice of a December 4, 2006, hearing on a third application for the same site, without the required text. Staff intends to review the latest application and staff report as soon as they are made available.)
- *Susan Holloway, et al v. Clatsop County*, LUBA No. 2006-044, October 5, 2006: **Goal 14, OAR 660-014-0040, Goal 11, OAR 660-011-0065, Goal 17, Goal 18**.
- *Central Oregon Landwatch v. Deschutes County*, LUBA No. 2006-098, September 25, 2006: **Goal 4, OAR 660-004-0025**.
- *Shelley Wetherell v. Douglas County*, LUBA No. 2006-122, October 9, 2006: **Goal 3, OAR 660-033-0020(1)**.
- *Oregon Shores Conservation Coalition, et al v. Lane County*, LUBA No. 2006-048, September 8, 2006: **Goal 16, OAR 660-017-0025(1) and (2)**.
- *Cornelius First, et al v. City of Cornelius*, LUBA No. 2006-042 and 2006-043, September 11, 2006: **OAR 660-009-0010(1), (2) and (4) as amended in 2001; OAR 660-012-0060(1)(c)(C)**.

None of these decisions requires a goal or administrative rule amendment; however the department's Urban Planning Specialist recommends that the next phase of OAR 660 division 024 rulemaking include a rule clarifying which population projection or projections in the comp plan may be used for a buildable lands inventory and UGB amendment.

3) Appellate court opinions

Between September 14 and November 8, 2006, the Department received 11 copies of recently issued opinions from the Court of Appeals. The Court affirmed 8 of LUBA's decisions, dismissed 2, and reversed and remanded one.

4) Other cases of interest

- Two appeals were filed on October 19 to contest Jackson County's adoption of lower densities for certain rural uses: *City of Ashland v. Jackson County*, LUBA No. 2006-185; and *Brent Thompson, et al v. Jackson County*, LUBA No. 2006-183.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

The department had set aside a portion of the grant fund to possibly supplement the grant to the Oregon Consensus Program for dispute resolution. With the participation of the Grants Advisory Committee, the department decided not to add funds to that grant. We are currently reviewing the options for the use of remaining funds (enough for one or two additional grants).

Federal Fund Coastal Management Grants

The Department's Coastal Management Program has been working with Curry County and the Cities of Brookings, Gold Beach, and Port Orford to provide grant funds to support a variety of planning projects, including a Stormwater Management Plan for the Urban Growth Area in the Harbor Hills south of the Chetco River and Phase 2 of a refinement plan for the City of Port Orford. The Coastal Conservation Coordinator is assisting the Oregon Parks and Recreation Department to complete an application for funds under the Coastal and Estuarine Lands Conservation Program (CELCP) in order to acquire a parcel of land on Beaver Creek near Ona Beach Wayside south of Newport. Availability of CELCP funds is dependent upon Congressional appropriations for FFY07.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

One jurisdiction – Cornelius – has completed periodic review since the last Commission meeting. The department has also approved a task submittal from Hood River County (regarding an unincorporated community plan) and approved an amendment to the Redmond urban growth boundary using periodic review procedures. We are currently reviewing submittals from Lane County (urban Goal 5 co-adoption), Woodburn (major plan update, including an urban growth boundary amendment), and Bend (code update). Sutherlin has submitted an urban growth boundary expansion for review.

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. DLCDC 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 three 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 7¾ 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 – 107/296 (through three quarters)

2. DEPARTMENT PROGRAM ACTIVITIES AND INTITIAIVES

A. PLANNERS’ NETWORK MEETINGS

A network meeting was held in Gresham for planners in the greater Metro area on November 13, 2006. Thirty people representing planning staffs or planning commissions from 14 cities, four counties, ODOT and the Economic Revitalization Team attended. DLCD staff highlighted issues of current interest including the UGB rule, the FEMA map modernization project, Transportation and Growth Management Program services and grant opportunities, and gave status reports on the Big Look and Measure 37.

A Coastwide Planner network meeting was held in Newport on October 20, 2006. More than 60 local government planners and state agency staff attended. Topics included updates on Measure 37 and the Big Look, a presentation and discussion of housing needs, and a presentation on the Northwest Area Network of Ocean Observing Systems (NANOOS) and its role in providing needed data to coastal planners.

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), 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, Dale Blanton in particular, continue to be actively involved in the review of two proposals for LNG import terminals, one at Bradwood Landing on the Columbia River about 30 miles upstream from the mouth and one at Jordan Cove in Coos Bay, which also includes a proposed 230 mile pipeline across the coast range to its connection to the interstate pipeline system near Malin in Klamath County. Most of the work has centered on the various approval processes and the information and analyses needed for these approvals. The Draft Environmental Impact Statement for the Bradwood project is expected soon.

The Coastal Program Manager, Robert Bailey, recently attended a conference in New Jersey to represent the Coastal States Organization on a panel discussion of certain provisions of the Energy Policy Act of 2005 that have been interpreted by NOAA as preempting state review and approval authorities under the federal Coastal Zone Management Act. The Coastal Program Manager is chair of the LNG Work Group for the Coastal States Organization that is coordinating state response to a variety of LNG issues.

Ocean Wave Energy Development

Coastal staff Greg McMurray, Dale Blanton, and Robert Bailey, continue to work with staff from the Office of the Governor and other state and federal agencies to address regulatory issues related to a wave energy research park proposed for the nearshore ocean near the mouth of the Umpqua River. Because this is the first such wave energy development in Oregon, many questions have yet to be answered in the regulatory environment.

Sustainability Plan

The Department has completed its 2007-2009 Sustainability Plan for submittal to DAS as part of the agency's budget description. The Sustainability Plan was written primarily by Robert Bailey and attempts to link the Oregon Statewide Land Use Program and the department's mission to carry it out to the Governor's call for agency action to support sustainability (see Attachment A).

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

Barbara Bull joined the department on Monday, September 25th, as a Compensation Claims Planning Specialist (Planner 3) in the Measure 37 Services Division. Barbara earned her undergraduate degree, in Mathematics, at Reed College. She holds a masters degree from Portland State University, also in Mathematics. She is currently in a Public Administration degree program at the University of Oregon. Barbara was last employed as an Associate Planner doing research with the Lane Council of Governments in Eugene. At LCOG she lead a Market Study group for nodal development under a DLCD grant; was support for the regional Transportation Finance Committee for the regional transportation plan update and the Transportation Demand Management Taskforce; and developed methodology for estimating acres of land with redevelopment potential using the Geographic Information Systems database.

Bryan Gonzalez joined the department on Wednesday, October 11th, as a Copy Editor (AS 2) in the Measure 37 Services Division. Bryan comes to the Dept after more than seven years with Wallace W. Lien, P.C., where he most recently managed the firm's Measure 37 claims and litigation practices. Bryan started at the firm while in high school and continued to work there while studying economics and international relations at Boston University. During his time at BU, he studied in London where he worked as a paralegal for Beachcroft Wansbroughs, a major city law firm. After returning home to Oregon, Bryan attended Western Culinary Institute and earned his Le Cordon Bleu diploma in patisserie and baking. In his free time, Bryan enjoys all types of music and is a classically trained pianist and vocalist who has performed both nationally and internationally.

Elizabeth Carey joined the department on Wednesday, November 1st, as a Compensation Claims Planning Specialist (Planner 1) in the Measure 37 Services Division. Elizabeth has an undergraduate degree in Urban Studies from Columbia University, where she directed the bulk of her academic study toward land use planning. Elizabeth indicates that while the majority of her experience with Oregon's Land Use Planning program is theoretical, she has also gained experience as an active citizen seeking to preserve and to appreciate the variegated Oregon landscape.

B. RECRUITMENTS

The department is finalizing its recruitment for a new Office Specialist 2 for the Operations Services Division.

C. DEPARTING EMPLOYEES

Steven Santos, a member of the department's economic development planning team, has left the department to take a position with Humboldt County, California.

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 senior staff meetings with the Oregon Economic & Community Development Department, to help improve coordination and communication between DLCD and OECDD.
- Participation in the Community Development Forum
- Oregon Forest Industries Council Conference (Sun River, October 9)
- "Building Better Communities" Conference (Bend, October 18)
- FEMA Legal Issues Workshop (Portland, October 20)
- Oregon Task Force on Land Use Planning (Medford, October 23 and Gresham, November 13)
- Meeting with Anita Winkler and Kristina McNitt from the Oregon Water Resources Congress (Salem, October 25)
- AG/Urban Coordinating Meeting (Portland, October 25 and November 29)
- "Mobility the Smart Way" with Gail Achterman, OTC (Portland, October 26)
- Measure 37 State and Local Coordinating Meeting (Salem, October 30)
- Planners Network Meeting (Gresham, November 1)
- Grantmakers of Oregon & SW Washington Conference (Eugene, November 2)
- Meeting with Professor Nobushia Taira (Salem, November 7)
- Metro Policy Advisory Committee (Portland, November 8)

- Association of Oregon Counties Conference (Eugene, November 14-16)

E. TRAINING

DLCD staff will be attending training for legislative coordinators on November 15, 2006. The focus of the meeting will be a presentation of the recommendations from the Public Commission on the Legislature. Staff will also be attending legislative training on December 6th. This session is scheduled at the capitol for several hours, and includes presentations from the governor's office, DAS, and legislative staff. Topics on the agenda include Governor's Office expectations, working with Legislative Counsel, chamber protocol, preparing and delivering legislative testimony, working with committee Staff, keeping lobbying records, and legislative research tools.

4. LEGISLATIVE INTERIM UPDATE

A. LEGISLATIVE BROWN BAG FORUMS

No DLCD legislative brown-bag lunch forum was scheduled for November. The next forum is scheduled to be held at the department at noon on December 6th.

B. DLCD LEGISLATIVE CONCEPTS

The department has received legislative counsel drafts of all three of its legislative concepts at the time of this report. The department is reviewing these drafts and may seek additional changes by legislative counsel. All agency concepts must be submitted to BAM after drafting is completed by legislative counsel.

Staff has begun discussing its concepts with various organizations. In October, the concepts were presented to the Community Development Forum. On November 6th, Bob Rindy met with the Land Use Task Force for the Regional Business Plan to discuss legislative concepts concerning industrial land.

5. LCDC POLICY AND RULEMAKING UPDATES

A. UGB RULEMAKING

The department filed new UGB rules with the Secretary of State on October 19th. The adopted rules will take effect on April 5, 2007, but local governments may choose to apply the rules to UGB related plan amendments on or after October 19th. The new rules are posted on the DLCD website at the following link:

http://www.oregon.gov/LCD/docs/rulemaking/div_660-024_100506.pdf

B. 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 met since last summer, but a sub-committee of the group has met several times since July. However, no meetings are scheduled at the time of this report, and the department does not anticipate that the group will reach agreement on changes to the current approval process.

C. 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 DLCDC is to provide guidance about DLCDC 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 meets every two weeks. The group has reached conceptual agreement on a Memorandum of Understanding (MOU) among agencies that review mining proposals. The MOU will assure a coordinated agency response to pre-applications and/or to local government plan amendment requests involving gravel mining. The MOU establishes a "pilot project" to test the process to coordinate and 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; October 23-24, 2006 in Medford, and November 13, 2006 in Gresham.

At the Medford meeting in October, the task force learned about regional problem solving and took a tour of the Bear Valley area. At the Gresham meeting in November, the task force learned about the Metro 2040 Regional Framework Plan and heard from the Mayors

or Councilors from Gresham, Damascus, Tigard, and Oregon City. The meeting also included a tour of four major development areas in Gresham (civic center, downtown, Pleasant Valley and Springwater) and the challenges of developing in these areas.

The task force continues to work on understanding the six issue areas identified in July 2006. The information they are collecting now will help frame the information and provide information about various policy options that can then be vetted to Oregonians as part of the public involvement phase of the task force's work program.

The next task force meeting is scheduled for December 15, 2006, at the DLCD offices in Salem.

ATTACHMENTS

- A. 2007-2009 Sustainability Plan
- B. Plan Amendment Summary