



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

October 4, 2007



TO: Land Conservation and Development Commission

FROM: Cora Parker, Acting Director

SUBJECT: **Agenda Item 11, Oct. 17-19, 2007, 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 20 and August 31, 2007, the Department received notice of 46 appeals filed with LUBA, including one from DLCD.

On July 23, 2007, the department filed a Notice of Appeal regarding Umatilla County's approval of a Goal 14 exception and zone change from Rural Light Industrial and Rural Residential to Retail Service Center for 18.3 acres on State Highway 11 and Stateline Road, north of Milton-Freewater (*DLCD v. Umatilla County*, LUBA No. 2007-137).

2) LUBA opinions

Between July 20 and August 31, 2007, the Department received copies of 34 recently issued LUBA opinions. Of these, LUBA dismissed 10, remanded 11, reversed 2, affirmed 8, invalidated 2, and transferred 1 petition to circuit court.

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

- Goal 3, OAR 660-033-0020(1)(a)(B), 660-033-0030(5): *Wetherell, et al v. Douglas County*, LUBA No. 2005-045, filed August 1, 2007.

- Goal 3, OAR 660-033-0020(1), 660-033-0030(5): *Wetherell v. Douglas County*, LUBA No. 2005-075, filed July 25, 2007.
- OAR 660-006-0005(2), 660-006-0010: *Herring, et al v. Lane County*, LUBA No. 2006-203, filed June 14 2007.
- OAR 660-006-0005, 660-006-0010: *Anderson, et al v. Lane County*, LUBA No. 2006-236, filed August 6, 2007.
- OAR 660-004-0022(2) and (4): *Wetherell v. Douglas County*, LUBA No. 2006-242, filed July 3, 2007.
- OAR 660-033-0100: *Thompson, et al v. Umatilla County*, LUBA No. 2007-052, filed July 5, 2007) (LUBA affirmed county approval of “*go below*” to 40-acre parcels on EFU land).
- Goal 9, OAR 660-009-0025(2): *Sorensen v. City of Creswell*, LUBA No. 2007-057, filed June 21, 2007.
- Goals 2, 6 and 11: *Santiam Water Control District v. City of Stayton*, LUBA No. 2007-072, filed July 9, 2007.
- OAR 660-033-0020(1)(a)(B) and (C): *Wetherell v. Douglas County*, LUBA No. 2007-073, filed August 8, 2007.

None of these decisions requires goal or administrative rule amendments.

3) Appellate court opinions

Between July 20 and August 31, 2007, the Department received copies of 14 recently issued opinions from the Court of Appeals. The Court affirmed 13 and reversed 1 of LUBA’s decisions.

The Court of Appeals affirmed LUBA’s remand for Medford’s failure to provide DLCD with **45-day notice of a proposed zoning map amendment** (*North East Medford Neighborhood Coalition, et al v. City of Medford*, LUBA No. 2006-132, Ct of App No. A134897, filed July 11, 2007).

4) Other notices and opinions of interest

- LUBA held that the 2005 amendments to ORS 92.10(7) and 197.015(13), which were intended to overrule *Hammer v. Clackamas County*, apply to all **final subdivision plats**, not just those that do not involve discretion (*Wagon Trail Ranch Property Owners Assoc. v. Klamath County*, LUBA No. 2007-076, filed August 3, 2007).
- LUBA dismissed an appeal of a Jackson County approval of aggregate mining on a 101-acre EFU parcel pursuant to a **Measure 37 waiver** (*Ford, et al v. Jackson County*, LUBA No. 2007-048, filed June 14, 2007).
- Friends of Umatilla County filed notices of appeal regarding **variances to the 160-acre minimum lot size** for EFU land approved for Powerline Ranch, LLC, Vineyard Group, LLC, High Ridge Properties, LLC and North Slope Management, LLC (*Friends of Umatilla County, Robert Klein, and Norm Kralman v. Umatilla County*, LUBA Nos. 2007-150, 151, 152, and 153, filed August 3, 2007).

- **ODOT** filed notices of appeal regarding decisions by **Newport** (annexation and rezoning of land in South Beach Neighborhood from High Density Residential to Industrial), **Clackamas County** (zone change on State Highway 212/224 from industrial to commercial), and **Madrás** (annexation and rezoning of 17.62 acres on State Highway 97 from Rural Residential and County Commercial to Corridor Commercial) (*Oregon Department of Transportation v. City of Newport*, LUBA No. 2007-123, filed July 6, 2007; *Oregon Department of Transportation v. Clackamas County*, LUBA No. 2007-148, filed August 2, 2007; *Oregon Department of Transportation v. City of Madras*, LUBA No. 2007-149, filed August 2, 2007).

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

As of October 1, 2007, the department closed out all of its 2005-2007 general fund grants.

On September 28, the department mailed letters to all Oregon cities and counties, inviting local governments to apply for 2007-2009 general fund grants. Five Oregon cities are expected to begin preparing periodic review work plans late in October and department staff anticipates that those cities will apply for grant assistance to help with the work tasks outlined in those work plans.

The department also anticipates continued strong demand for grants to provide technical assistance for local planning projects undertaken by local governments outside of periodic review. As outlined in the department's Grants Allocation Plan for 2007-2009, the approximately \$2.5 million general fund grants budget will be split three ways.

Approximately \$500,000, earmarked for infrastructure planning in unincorporated urbanizing areas, will be spent as requested by the legislature's budget note. Half of the remaining \$2 million will be dedicated to assistance for cities in periodic review. Remaining grant funds will be available to provide technical assistance to local governments not in periodic review.

Federal Fund Coastal Management Grants

The Grants Coordinator for the Coastal Management Program continued routine processing of interim grant payments to and receiving grant closeouts from local government.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

Department staff met with members of the Periodic Review Assistance Team (PRAT) on September 27 to discuss the revival of periodic review. PRAT agencies have been asked to submit comments and/or suggestions to the department (for those jurisdictions in periodic review) no later than October 15, 2007. PRAT comments will then be included in the commission's official notice to the first 5 cities in late October.

One or more of those cities scheduled to receive notice in October have already commenced an evaluation of their comprehensive plan. Department staff expects work plans for the first round to be submitted for review and approval by the commission within the next 3 to 6 months.

The City of Ontario submitted updates to the Goal 9 and Goal 10 elements of the city's comprehensive plan as part of its continued effort to complete periodic review.

2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

Coastal Management Program

Coastal staff continued to work closely with local governments, state and federal agencies, and stakeholders on a number of issues:

Liquefied Natural Gas Import Facilities: Dale Blanton, Federal Affairs Coordinator, and others have been monitoring activities and coordinating closely with the applicants, as well as staff of state and federal resource agencies on three proposed projects:

- Bradwood Landing in Clatsop County on the Columbia River;
- Skipanon River site in the City of Warrenton near the mouth of the Columbia River estuary; and
- Jordan Cove Energy in Coos County on the Coos Bay Estuary.

In addition, Bob Bailey, Coastal Program Manager, has been chairing a special LNG Working Group for the Coastal States Organization, principally facilitating periodic conference calls among 19 coastal states to discuss and coordinate LNG policy.

Ocean Wave Energy: Coastal staff have spent significant effort on a number of policy and technical aspects of this emerging activity:

- Greg McMurray, Marine Affairs Coordinator, led planning and preparation for a technical workshop of experts held in Newport at the Hatfield Marine Science Center in early October to assess the technical and scientific aspects of wave energy development in the marine environment; Greg has also participated on behalf of the Department in an Oregon Solutions mediation process to identify and resolve issues associated with the proposed wave energy facility near Gardiner, OR;
- Bob Bailey, Program Manager, Paul Klarin, Coastal Policy Specialist, Greg McMurray, Marine Affairs Coordinator, and Dale Blanton, Federal Affairs Coordinator, have collaborated to provide policy assessments, advice, and recommendations to the Office of the Governor on ocean wave energy development (Attachment A). There has been considerable discussion about the need to clarify the state's regulatory framework and to prepare an ocean use plan for the Territorial Sea that would account for wave energy development, marine reserves, and ocean fisheries.

Marine Reserves: DLCD coastal program staff, particularly Greg McMurray and Paul Klarin, worked closely with the Office of Governor, other agencies, marine scientists, stakeholder groups, and the Ocean Policy Advisory Council, its Executive Committee and Marine Reserves Working Group, to provide staff assistance and support to meet the charge from the Governor to designate a limited system of marine reserves. In addition, DLCD GIS staff, Randy Dana, Tanya Haddad, and Andy Lanier (see below) began work with other state and federal agencies and university specialists to develop a database of available information to be used in the marine reserves nomination and designation process.

Coastal Impacts of Climate Change: Jeff Weber, Coastal Conservation Coordinator, worked with a number of state and federal agencies and university scientists to organize a half-day workshop on the issue of the effects of climate change on the Oregon coast. This workshop will be held October 25, 2007, in Yachats in conjunction with the annual All Coast Planners' Network meeting.

National Coastal Management Performance Measurement System: Jay Charland, State Agency Permits Coordinator, has taken over responsibility for working with the National Oceanographic and Atmospheric Administration to provide data about program activities to meet national performance measures. As part of this work, Jay and Jeff Weber have been re-inventorying coastal access sites on the Oregon coast to ensure accuracy and that public access is maintained and not lost due to development or changing circumstances.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

Andy Lanier, Coastal Fellow, began work with the Coastal Program on September 4. Andy will be with the Department for two years and will work with Tanya Haddad, the Coastal Atlas Administrator, to develop tools to help the public and state and federal decision-makers access and visualize a wide range of ocean data. Andy recently completed his Masters Degree in Marine Resources Management at Oregon State University and has significant work experience in marine databases and GIS in the Active Tectonics Lab in the College of Oceanography and Atmospheric Sciences.

Camille Cole, M37 Copy Editor joined the department in August in the Measure 37 Division. She was last employed with the Department of Education as an eLearning Distance Education Coordinator. Her vast experience in writing and editing many types of manuals and documents will be a valuable asset to the Measure 37 Division. Camille and her husband moved to Salem from Portland in 2005. In her free time Camille writes novel-length fiction and short stories.

Grant Young, NE Oregon Regional Representative, comes to DLCD most recently from the City of Ontario, where he has been the planning and zoning administrator for the past 2-1/2 years. Among Grant's recent projects are successful Goad 9/Goal 10 updates of the

city's comprehensive plan, the initial phase of a Downtown master plan and the establishment of an urban reserve area. Grant brings a great deal of local planning experience (both urban and rural) and an enthusiastic optimism to the job.

Marguerite Nabeta, has transferred from her current position of Southern Willamette Valley Regional Representative into the Metro Regional Representative position (previously held by Stacy). Marguerite's experience and enthusiasm will be a great asset to the Metro area.

B. RECRUITMENTS

The Planning Services Division has concluded interviews to fill a vacancy in the natural hazards program. The position is a Natural Resources Specialist 2, Natural Hazards and Geographic Information Systems Specialist. References have not been consulted at the time of this report, but several qualified candidates were considered.

The Community Services Division conducted interviews to fill a vacancy in the South Willamette Valley field office. Those interviews were conducted at press time and the Division hopes to announce a final candidate at the Commission's October meeting. Several qualified candidates applied for the position recently vacated by Marguerite Nabeta. Marguerite has successfully transitioned to the department's Portland office to work with jurisdictions in the METRO region.

C. DEPARTING EMPLOYEES

Stacy Humphrey left the department in August. She accepted a position as the Special Projects and Policy Planner with the City of Gresham. This is a great opportunity for her. Her enthusiasm and positive attitude will be missed here at DLCD. We wish her the best at City of Gresham.

D. DIRECTOR ACTIVITIES

During the period of this report the acting director has been involved in several activities in support of the work of the department, both within the department and internally. Highlights of the acting 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 OECD
- ERT Director Field Trip to Wallowa and Union Counties (Sept. 4-6, Eastern Oregon)
- Oregon Planning Institute (Sept. 13, Eugene)
- League of Oregon Cities Annual Conference (Sept. 28, Bend)
- Pacific Program (Oct. 8-12, Salishan)

4. LEGISLATIVE UPDATE

There are three interim legislative committees charged with natural resources issues: Senate Environment and Natural Resources, House Agriculture and Natural Resources and House Energy and Environment. The department has heard from committee staff (Beth Patrino) that all three committee chairs are in the process of putting together work plans for the next five months leading up to the Feb. '08 session. At this point, those work plans do not appear to be published. However, the department was asked by the Governor's Office to identify any critical '08 issues. The following items were identified for DLCD (You will note that they all relate to either Governor's Office priorities or to possible budget necessities, rather than any critical policy agendas):

- Marine Reserves: Possible DLCD support for the STAC review of reserve nominations
- Big Look Task Force: Possible restoration of funding and/or other related issues
- Funding for implementation of BM49, if approved in November.

5. LCDC POLICY AND RULEMAKING UPDATES

A. RULEMAKING

The Workgroup on Metro Urban and Rural reserves has met three times: September 5, September 20, and October 1. The group has been well-attended, and has made significant progress working through draft rules for Metro Urban Reserves. There is a draft of rules for Metro rural reserves as well, but the group has not had time to work this draft. The workgroup is aiming to have drafts available for public review by mid-November, in time for the first public hearing at LCDC's November 30 meeting. The DLCD website has materials and other information at the following link:

http://www.lcd.state.or.us/LCD/metro_urban_and_rural_reserves.shtml

A suggested list of additional rulemaking for the 2007-09 biennium is included as Agenda

Item 8 on the Commission's October meeting agenda.

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

As agreed at its July 16th meeting, the task force completed final changes to its preliminary report and "conclusions" document. That document was provided to the department for posting on the task force website and distribution to members of the legislature.

No further task force activities are scheduled at this time.

ATTACHMENTS

A. Status of Oregon's Governance Regime for Ocean Wave Energy Memo