

January 18, 2006

TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director
SUBJECT: **Agenda Item 13, Feb. 1-3, 2006 LCDC 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 November 1, 2005 and January 9, 2006, the Department received notice of 22 appeals filed with LUBA.

LUBA opinions

Between November 1, 2005 and January 9, 2006, the Department received copies of 27 recently issued LUBA opinions. Of these, LUBA dismissed 13, affirmed 6, remanded 8, reversed 0, and transferred 0 petitions to circuit court.

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

- *Rhodes v. City of Talent* (“Rhodes II”), LUBA No. 2005-031: OAR 660, Division 012 (Transportation Planning Rule);
- *Costco v. City of Beaverton, BOLD, LLC v. City of Beaverton, CE John Co. v. City of Beaverton*, LUBA Nos. 2005-044, 2005-046, 2005-050, 2005-053: OAR 660-014-0060 (Annexations of Land Subject to Acknowledged Comprehensive Plan);

- *4-J Land Co. v. City of Sandy*, LUBA Nos. 2005-047, 2005-048: Goal 10 (Housing);
- *Ghena v. City of Grants Pass*, LUBA No. 2005-072: Goal 2 (Land Use Planning), OAR 660-012-0015(15)(coordination of transportation system plans)
- *Oregon Shores Conservation Coalition v. Coos County*, LUBA No. 2005-087: Goal 3 (Agricultural Land), Goal 4 (Forest Land), OAR 660-04-0018(4)(c)(Exceptions lands in unincorporated communities), OAR 660, Division 022 (Unincorporated Communities);
- *City of Damascus v. Clackamas County*, LUBA No. 2005-102: Goal 2 (Land Use Planning: planning coordination);

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

Appellate court opinions

Between November 1, 2005 and January 9, 2006, the Department received copies of 15 recently issued opinions from the Court of Appeals. The Court affirmed 3 cases and reversed and remanded the other 12 cases to LUBA.

Of note: LUBA's decisions in all 11 Newberg-Dundee Bypass appeals were reversed and remanded.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

The City of Garibaldi is embarking on an aggressive effort to improve its community and guide future development. They applied for and have been awarded a DLCDC Coastal Program Economic Opportunity/Comp Plan Grant and a 1000 Friends of Oregon Coastal Communities Connection grant.

DLCDC also awarded the city a Technical Assistance Grant for \$15,000 to fund an urban renewal plan designed to provide the City of Garibaldi with a mechanism to fund community development and redevelopment. The mayor, members of the city council, a Tillamook County commissioner, property owners and Port of Garibaldi representatives attended a kickoff workshop with urban renewal consultant in early January. The primary task of that meeting was to begin the process of establishing and defining goals to guide their funding decisions. Garibaldi's urban renewal district will be the state's smallest but it will capture the tax increment of recently proposed developments and will help the city develop a strong funding base for needed improvements.

Overall, the department has signed 17 Technical Assistance grant agreements totaling over \$500,000 and one Periodic Review grant for \$15,000. An additional 11 Technical Assistance and three Periodic Review grant applications totaling \$446,000 have been approved by the department. Eight Technical Assistance and no Periodic Review applications have been denied. There are 26 Technical Assistance applications pending.

Intergovernmental Agreements

On December 28 the department received a copy of a memorandum from Ann Hanus, Director of the Department of State Lands (DSL), reporting that DSL is nearing completion of a major revision of its State Agency Coordination (SAC) Plan. The Plan will be presented to the Land Board for adoption at its February meeting. Each state agency with programs affecting land use are required by law to plan for coordinating such programs with statewide goals and local governments. DSL's and most other state agencies completed this requirement and had such plans certified by LCDC fifteen years ago. DSL is the first agency to perform a major update of their SAC plan. Unlike the initial SAC plans for each agency, updates are not required to be approved by LCDC. Bob Rindy and Dale Blanton have worked with DSL on this update, and the department has provided comments recommending that the plan meets state requirements.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

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

Bend Periodic Review Update – Transportation System Plan (TSP) Subtask

At the September 2005, LCDC meeting in Bandon, the Commission conducted a hearing regarding an appeal of the department's approval of the city's completed TSP subtask relating to the widening of minor arterial streets. The Commission granted the city's request for a continuance of the hearing so that the city and appellant, Mr. Paul Dewey, could negotiate and resolve some or all of the appeal issues.

The city and DLCD staff met with the Mr. Dewey in Bend in December, 2005 to negotiate amendments to the TSP policy language to resolve the appeal issues. The city staff and appellant prepared draft language that resolves all of the appeal issues. City staff presented their preliminary findings to the Bend City Council at an executive session on January 4, 2006, and will present the draft language to the Bend City Council on January 18, 2006. The City Council will give direction to city staff whether or not to proceed with public hearings to consider adoption of the amendments. If the City Council decides to not proceed with public hearings to consider adoption of the amendments, it will be necessary for the Commission to reconvene the hearing at the March, 2006 meeting in McMinnville and make a determination on the appeal issues.

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 each quarter during 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 last page displays DLCD participation for the last seven 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 (first two quarters)

2. DEPARTMENT PROGRAM ACTIVITIES AND INTITIAIVES

DLCD hosted a “Planners’ Network” meeting in La Grande on December 13. This gave Salem staff and local planners a chance to visit our new La Grande office. Staff (generally planners) from nine cities (Boardman, Imbler, Island City, Halfway, Baker City, Joseph, LaGrande, Milton Freewater and Ontario) and seven counties (Baker, Malheur, Morrow, Sherman, Umatilla, Union and Wallowa) attended. Economic Development directors from Umatilla and Malheur Counties also participated. Representatives of ODOT Region 5 and Sheri Davis, the regional coordinator for the Economic Revitalization Team also attended. Director Shetterly; Deputy Director George Naughton; Eastern Regional Representatives Darren Nichols and Jon Jinings; Economic Development Specialist, Steven Santos; Community Development Specialist, Larry Ksionzyk; Urban Coordinator, Gloria Gardiner and Planning Services Manager, Ann Beier attended on behalf of the department.

Department staff provided an update on the Senate Bill 82 land use review effort, Measure 37 and the Commission’s policy agenda for the 2005-07 biennium. City and county representatives then discussed the issues that they are faced with. Main issues related to development in farm/forest zones, the process for amending urban growth boundaries, affordable housing, water, coordinating with state agencies and making information on the planning program available to citizens, new staff and planning commissioners. The department received compliments on the updated website. The afternoon was spent in a roundtable discussion with the city and county representatives to get an overview of the planning issues they are dealing with.

The Planners' Network meetings are intended to provide local planners an opportunity to meet with Salem-based department staff, to share ideas with each others and to discuss issues. The department hopes to host additional meetings this spring.

The Department continues to provide staff support to the Governor's Ocean Policy Advisory Council (OPAC). OPAC met in Coos County, at South Slough, on December 9, 2005, and will meet in Newport on January 20, 2006. The Governor has requested OPAC to provide input and advice on his recently-announced effort to seek the establishment of a Marine Sanctuary off the Oregon Coast through federal legislation. OPAC has also been engaged in providing advice to the Governor on the issue of marine reserves, and other issues of interest and concern to the state and coastal communities.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

The department has hired several new staff to work on Ballot Measure 37 activities. We are very pleased to welcome them to the department:

Emily Eng is the department's new Compensation Claims Planner with the Planning Services Division. Emily recently received a Master's degree in Community & Regional Planning from the University of Oregon. She received her Bachelor's degree in Urban Studies from Vassar College in Poughkeepsie, New York. Originally from Queens, NY, she worked briefly as a research assistant for a nonprofit in Brooklyn called Civic Builders and as an instructor for a citywide tree stewardship program at the nonprofit Trees New York. Drawn by the state's reputation for innovative development, she moved to Oregon to attend graduate school. While at UO, she took on a variety of sustainability-related activities. Her interests include regional planning, mixed-use development and green building.

Shawna Mongillo is the department's new Compensation Claims Technician with the Planning Services Division. Shawna has been with the State of Oregon for four years. She joins DLCD from the Department of Administrative Services, Information Resources Management Division where she was a Project Manager with the E-government Program. She has a background in program and project development. She received certification as an Oregon Project Management Associate and is working to continue her education in Social Science and Business Administration through Portland State University.

Joo Ree Kim is the department's new copy editor for Measure 37 related documents. Before coming to the Department of Land Conservation and Development, Joo Ree worked as a copy editor at the Office of the Legislative Counsel during the 2005 legislative session.

Lloyd Chapman has rejoined the department to assist with Measure 37 review and report writing. Lloyd retired from the department several years ago and his wealth of experience with Oregon's land use program has been very helpful as we work to increase the efficiency of our Measure 37 review process.

Jon Andrus has accepted an Office Specialist position with the department and is serving as the agency's receptionist. He is also providing general support to the Measure 37 program.

Heather Awlasewicz who has been with the department since December 2004 has accepted the position of Measure 37 Compensation Claim Team Support Specialist. Heather will be helping evaluate claims to determine what information is needed for planning staff to complete their staff reports.

RECRUITMENTS

The department is finalizing recruitment for its Information Specialist 4 (IS4) position. This position will provide additional agency user support for the department and will reside in the Operations Services Division. The department anticipates an approximate hire date of early February.

The department is preparing for recruitment of its Operations Services Division Office Specialist 2 (OS2) position. The department anticipates an approximate hire date of early March.

The department is currently recruiting for its Principal Contributor 1 (PC1) position, which will serve as the main staff contact and support for the SB 82 land use review task force. The last date for filing applications was January 18, 2006. The next steps in the recruitment will be the review of the applications, selection of candidates for interviews, and the scheduling and conduct of interviews. Staff from the offices of the Governor, Senate President and Speaker of the House will assist in the interview process for the position.

A Willamette Valley Regional Representative position has also recently become vacant due to the resignation of Geoff Crook to accept a position outside the department. Recruitment for that position will begin as soon as possible.

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 Legislator Brown-Bag Meetings

- Meeting with Forest Grove mayor and planning staff (Forest Grove, November 22, 2005)
- Participation in Ocean Policy Advisory Committee (Coos Bay, December 9)
- Eastern Oregon Planners Network Meeting (LaGrande, December 13)
- Annual Leadership Summit (Portland, January 9, 2006)
- Meeting with ODOT and Washington County staff regarding implementation of TPR amendments (Portland, January 9, 2006)
- Lake Oswego Rotary Club (Lake Oswego, January 23)

C. TRAINING

On January 5, 2006, department staff participated in a training session on the review and evaluation of claims filed under Ballot Measure 37. The training was led by Virginia Gustafson, of the Department of Justice, and attended by staff from the Department of Administrative Services. On December 15, 2005, the department's Communications Officer participated in a training session by the Department of Justice on 'Avoiding Legal Trouble with E-mail and the Internet.'

4. LEGISLATIVE INTERIM UPDATE

The House Interim Committee on Land Use will meet on January 26th. The agenda is preliminary at the time of this report, but will likely include discussions and invited speakers regarding Measure 37 and The Big Look. The department will provide an update to the commission about this hearing.

5. LCDC POLICY AND RULEMAKING UPDATES

Updates regarding ongoing policy work groups are provided below:

A. MINERAL AND AGGREGATE CONSENSUS GROUP

The Governor's Mineral and Aggregate/Farmland Consensus Group met on December 15, 2005. This was the group's first meeting since August 31, 2005. The group heard an update of ongoing discussions by representatives of aggregate and agriculture interests, outside of the main group discussions. At this point, only some very general points of agreement have been reached, but these efforts are continuing. The group also discussed information about past aggregate mining in the state gathering by PSU, which begun early in 2005 and is near completion. The mining and agriculture interests continue to disagree as to the adequacy and general conclusions of this research so far. The Consensus Group intends to meet again in February, but a date had not been determined at the time of this report.

B. RURAL COMMERCIAL AND INDUSTRIAL WORK GROUP

The Rural Commercial and Industrial Work Group has not met since the last commission meeting.

C. UGB AMENDMENT PROCESS WORK GROUP

The UGB work group has not met since April of this year, although a subcommittee of the group met in June. LCDC decided at its September meeting to postpone a decision as to whether to continue this project until the February 2006 LCDC meeting. The workgroup has been informed of the commission's schedule in making this decision.

D. GOAL 9 RULE MAKING WORK GROUP

The Goal 9 Rule Making Work Group has not met since the last commission meeting.

E. TRANSPORTATION PLANNING RULE

See Agenda Item 6.

F. PERIODIC REVIEW

See Agenda Item 8.

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

An update on the Senate Bill 82 task force to review the Oregon land use planning program will be presented orally at the commission meeting.

ATTACHMENTS

- A. Submitted Periodic Review Tasks under Review
- B. Plan Amendment Summary Totals