

April 15, 2005

TO: Land Conservation and Development Commission  
FROM: Lane Shetterly, Director  
SUBJECT: **Agenda Item 13, April 28-29, 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.

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

Between February 24, 2005 and April 6, 2005, the Department received notice of 22 appeals filed with LUBA.

On March 31, 2005, LUBA heard oral argument in *Regan v. Lincoln County*, LUBA No. 2004-202, which appeals County denial of a land use consistency determination for an Oregon Parks and Recreation Ocean Shore Permit. The Department is participating as an intervener in support of the County's decision. Steven E. Shipsey, Assistant Attorney General, represented the Department.

On March 31, 2005, LUBA heard oral argument in *Scott C. Young, M.D. and Robin James v. Jackson County*, LUBA No. 2005-001, which appeals County denial of change of use on EFU land within 3 miles of the Ashland UGB from residential to religious use. The Department is participating as an intervener in support of the County's decision. Steven E. Shipsey, Assistant Attorney General, represented the Department.

## **2) LUBA opinions**

Between February 24, 2005 and April 6, 2005, the Department received copies of 27 recently issued LUBA opinions. Of these, LUBA dismissed 12, affirmed 5, remanded 8, reversed 2, and transferred no petitions to circuit court.

Five of these decisions concern the application or interpretation of a statewide planning goal or LCDC administrative rule. None require a goal or administrative rule amendment.

In *Friends of Deschutes County and Sisters Forest Planning Committee v. Deschutes County* (LUBA No. 2004-160), LUBA affirmed the County's adoption of an updated population forecast in its comprehensive plan for the county and for the incorporated cities within the county. Appeal issues concerned Statewide Planning Goals 2, 3 and 5. Department staff had recommended Department participation in this appeal in support of parties who challenged the updated forecast. The Commission decided on November 5, 2004 to not participate in this appeal because of an anticipated increased demand on the Department's budget for Department of Justice services due to the passage of Ballot Measure 37 (2004) on November 2, 2004.

In *Steve Doob and Blair Tudor v. Josephine County* (LUBA No. 2004-175), LUBA held that approval of a committed exception to Goal 14 requires satisfaction of the criteria in OAR 660-014-0030 (Rural Lands Irrevocably Committed to Urban Levels of Development), not those in OAR 660-004-0028 (Exception Requirements for Land Irrevocably Committed to Other Uses).

In *Oregon Shores Conservation Coalition, et al v. Coos County* (LUBA No. 2004-132), LUBA remanded county approval of a marina and recreational planned unit development on property located within the Coos Bay Estuary Management Plan area in light of LUBA's interpretation of Goals 16 and 17 and OAR 660, Divisions 17 and 37.

In *Penny Cox v. Polk County* (LUBA No. 2004-166), LUBA remanded county approval of a dog control facility in Public Zones based, in part, on interpretation of Goal 5 and OAR 660, Division 16, and interpretation of "dog control facility" as similar to "dog kennel, which is a permitted use in EFU zones.

In *Jerry Lichvar v. Jackson County* (LUBA No. 2004-207), LUBA affirmed the county's denial of a non-farm dwelling on EFU land based on its interpretation of OAR 660-033-0130(4)(a) and (c).

## **3) Appellate court decisions**

Between February 24, 2005 and April 6, 2005, the Department received a copy of one recently issued opinion from the Court of Appeals. This opinion did not concern a statewide planning goal or LCDC administrative rules.

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

The department has received no new task submittals since the previous director's report. A summary of activity is provided in Attachment A.

## **C. ENFORCEMENT ORDERS**

The department notified the petitioner for enforcement against the City of Bandon that the procedural requirements for such a petition had been satisfied. The matter will therefore be brought before the Commission to review the substantive aspects of the request. We have informed the petitioner that the hearing is preliminarily scheduled for the September Commission meeting, in Bandon.

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

### **A. COASTAL MANAGEMENT PROGRAM SPONSORS GIS TRAINING**

In mid-March the Coastal Management Program (OCMP) sponsored an outstanding training opportunity for DLCD coastal staff and seven local planners in the use of the latest Geographic Information Systems (GIS) software. The training was conducted at Oregon State University (OSU) and hosted by OSU Sea Grant. Trainers from the Coastal Services Center (CSC), a National Oceanic and Atmospheric Administration (NOAA) agency, conducted the sessions. The training included two days of basic instruction in the use of ArcGIS version 9 from Environmental Systems Research Institute (ESRI) (at a fraction of the open market cost) and two days of instruction applying the software to real-world decision making for coastal resources. ArcGIS is rapidly becoming a fundamental tool in the suite of tools planners use to conduct their business. The OCMP has provided technical assistance grants to many coastal jurisdictions to acquire hardware and GIS software and to develop GIS data themes.

### **B. OREGON COASTAL ATLAS: YEAR 2 STATISTICS SUMMARY**

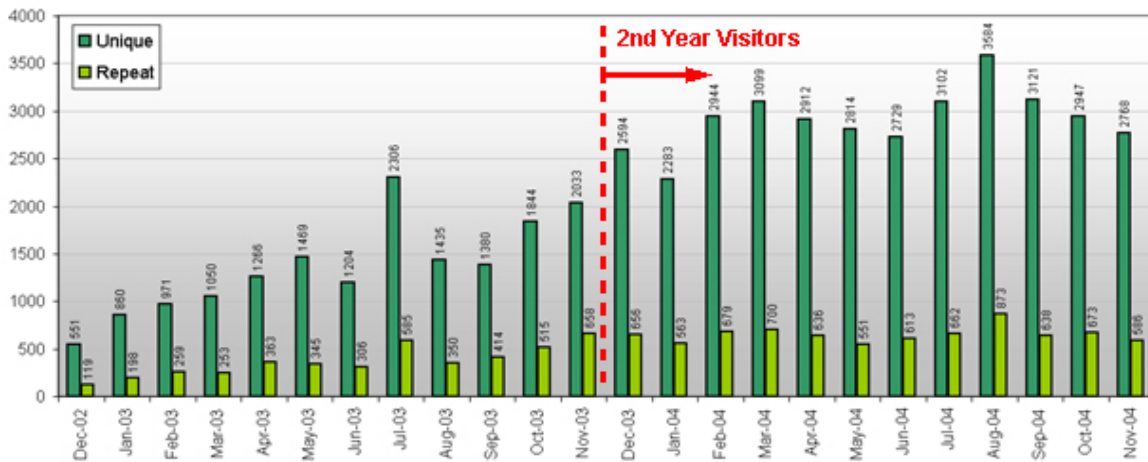
December 1, 2004 marked the close of the second full year of operation for the Oregon Coastal Atlas website (<http://www.coastalatlus.net>). This second full year showed close to 2 million hits served, which is a 77% increase over the first year activity. These hits represented the usage of over 25,000 separate visitors. Also significant is a doubling of very regular customers of the Coastal Atlas, with over 1,000 users utilizing Atlas resources 10 or more times over the year. This would indicate that users are finding the Atlas to be a reliable source of information about the coast, worth returning to when coastal questions arise. The department's usage statistics indicate that a primary mission of the Coastal Atlas, that being delivery of and increased access to digital geospatial data for the coast, is being fulfilled: 80 percent of the products downloaded from the web site consist of custom maps composed and saved from the interactive mapping server (42%) or raw geospatial data itself (38%).

Looking ahead in this third year of the Coastal Atlas the department anticipates a continued increase in the importance of the Atlas to constituents who are seeking coastal information.

Already January 2005 has recorded as the department's all-time highest traffic volume month ever, attributable (based on items downloaded) to users seeking maps and information about the potential effects of a tsunami on coastal communities. This sudden demand and the department's ability to respond, illustrates the value of maintaining a central information clearinghouse which coastal users can turn to in a time of information need. The Atlas will continue to serve this and other important public information in the year to come.

**Breakdown of Year 2 Increased Coastal Atlas Hits, Unique Visitors, and Repeat Customers**

|                            | Year 1    | Year 2    | % Change |
|----------------------------|-----------|-----------|----------|
| <b>Hits</b>                | 1,118,631 | 1,978,864 | +77%     |
| <b>Avg. Visits per day</b> | 104       | 209       | +101%    |
| <b>Unique Visitors</b>     | 11,373    | 25,653    | +125%    |
| <b>Repeat Customers</b>    | 2,268     | 4,796     | +111%    |
| <b>2-5 visits</b>          | 1,514     | 3,255     | +115%    |
| <b>6-9 visits</b>          | 214       | 499       | +133%    |
| <b>10 or more visits</b>   | 540       | 1042      | +93%     |



**3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION**

**A. RECRUITMENTS**

The department is in process recruiting for the Fiscal Analyst 2/Budget Officer position in the Operations Services Division. The department anticipates interviews occurring mid to late May with an approximate hire date occurring in June.

The department is in the process of recruiting for a Transportation and Growth Management planner. Interviews have been held and we hope to fill this position by early May.

## **B. NEW STAFF**

The Northeast Oregon Regional Representative position has been filled. A current employee, Darren Nichols, has accepted a reassignment to La Grande, beginning this summer. Darren was recently hired by DCLD to fill a limited-duration Measure 37 planner position.

## **C. 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.
- Mid-Willamette Valley Council of Governments - Measure 37 Question & Answer (Salem, March 25)
- RE/MAX Equity Group (Salem, March 29)
- Florence City Club (Florence, April 15)

## **D. TRAINING**

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

# **4. LEGISLATIVE UPDATES**

## **A. SESSION LEGISLATIVE ACTIVITIES**

The department has been involved in activities related to the legislative session, including meetings with individual legislators, testimony to legislative committees, and meetings with legislative work groups.

The director meets regularly on legislative issues with state Agency Heads and the Natural Resources Cabinet. Bob Rindy meets regularly with legislative policy analysts from other

Natural Resources Agencies. The director and Bob Rindy also meet regularly with the Commission's Legislative Subcommittee to review legislation and legislative strategies.

As of April 6, 2005, the department is tracking 247 bills and has prepared 195 fiscal impact statements in response to requests from the Legislative Fiscal Office. The department has exceeded the historic 170 average number of fiscals prepared each session.

All three of the department's bills have passed out of the senate Environment and Land Use Committee. SB 82, establishing the Task Force on Land Use Planning (i.e., the so-called "30-year Review" or "big look" bill), has been referred to the Ways and Means Committee, but no hearing has been scheduled in Ways and Means as of the date of this report. SB 96 would authorize LCDC to amend a goal with only one hearing if the amendment is required as a result of a new or amended statute. The bill passed on the Senate floor April 7 with no opposing votes. The House Land Use Committee held a hearing on the bill April 11, and there was no opposition to the bill, but a work session has not been held to move the bill to the floor. SB 103 corrects a previous legislative error by adding farm worker housing provisions to EFU statutes in marginal lands counties. The bill passed the Senate with no opposition and has had one hearing in the House Land Use Committee, where no opposition was expressed.

The department has been actively involved in two legislative workgroups drafting new legislation. One of these was established by Senator Ringo in order to work on SB 1037 relating to Measure 37. That bill has had one hearing in the Senate Land Use committee, and additional hearings are anticipated as the workgroup continues to discuss the bill. The second workgroup was established by the House Land Use Committee to consider ways to increase the supply of large industrial sites statewide. The workgroup is chaired by Tom Gallagher and is currently working on proposed amendments to HB 2963 in order to establish a "fast-track" process to add sites to urban growth boundaries for large-scale industrial use. The department has provided a proposal to increase the speed of UGB amendments for large-scale industrial sites, but at this point it appears likely Mr. Gallagher will submit a different proposal for house committee consideration. The department has not seen nor taken a position on this proposal as of the date of this report.

The department has testified indicating support or concern with respect to a number of bills scheduled for hearings and work sessions in the House Land Use Committee. Several of these have gone on to pass to the House floor and on to the Senate. The department's bill tracking list is provided to the commission on a weekly basis.

## **B. LEGISLATIVE ACTION REGARDING THE AGENCY BUDGET**

On April 5, the department presented day one of a two-day Phase 2 Presentation before the Natural Resources Subcommittee on Ways and Means. The director presented testimony on the new direction and charge of the department and the Commission, the department's policy programs and the department's policy option packages. The department's budget presentation was well received by the subcommittee.

On April 12, the department presented day two of the Phase 2 Presentation. The second day of the Phase 2 hearing involved department testimony regarding the Coastal Program, Ballot Measure 37, and public testimony.

## **5. LCDC RULEMAKING WORKGROUP UPDATES**

### **A. RURAL COMMERCIAL AND INDUSTRIAL WORKGROUP**

This group has not met since the last Commission meeting. They will meet on Friday, April 29 to continue the discussion regarding the scale of industrial and commercial uses that could be authorized in exception areas zoned for such uses. We note that the house has considered three bills that would in some manner authorize commercial and/or industrial use in rural areas in buildings of any size. One of these bills, HB 2458A, has already passed the house. Another, HB 2956, is scheduled for work session on April 18. The department has expressed concern with these bills, and has reported to the house committee regarding the ongoing work of the rural commercial and industrial lands workgroup.

### **B. UGB AMENDMENT PROCESS WORK GROUP**

This workgroup is discussing a new set of rules to clarify the current UGB amendment process and, most important, to provide 'safe harbors' intended to streamline the UGB process. This group last met on February 17. The next workgroup meeting will be April 21, at which time the workgroup intends to discuss a schedule to complete this rulemaking. At the request of the commission, the workgroup will not meet again until the legislative session concludes.

## **6. BALLOT MEASURE 37 UPDATE**

Information on department activities relating to Ballot Measure 37 will be covered separately under Agenda Item 7.

## **ATTACHMENTS**

### **A. Periodic Review Summary**