

April 20, 2006

TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director
SUBJECT: **Agenda Item 10, May 3-5, 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 February 22 and April 18, 2006, the Department received notice of 35 appeals filed with LUBA.

LUBA opinions

Between February 22 and April 18, 2006, the Department received copies of 51 recently issued LUBA opinions. Of these, LUBA dismissed 32, affirmed 7, remanded 11, reversed 1, and transferred 0 petitions to circuit court.

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

- OAR 660-023-0180: *Westside Rock v. Clackamas County*, LUBA No. 2005-103; and *Lindsey et al v. Josephine County*, LUBA No. 2005-112;
- Goals 3 & 4, OAR 660-004-0018 (2)(b)(B), OAR 660-004-0028: *Anderson v. Coos County*, LUBA No. 2005-117;
- Goal 17, OAR 660 division 37: *Oregon Shores Conservation Coalition, et al v. Coos County*, LUBA No. 2005-131.

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

Two of these decisions were on remand from the Court of Appeals and concerned the Newberg-Dundee Bypass: *1000 Friends of Oregon v. City of Dundee*, LUBA No. 2004-144, and *Columbia Empire Farms v. City of Dundee*, LUBA No. 20004-145. LUBA followed the Court's instruction to remand to the city.

Appellate court opinions

Between February 22 and April 18, 2006, the Department received copies of 5 recently issued opinions from the Court of Appeals:

- *Morsman, et al v. City of Madras*, CA A129627 (LUBA No. 2003-170): The Court affirmed LUBA's decision that the city's ORS 222.170(1) "triple majority" annexation of 759 acres did not violate the Oregon and US Constitutions' equal protection clauses.
- *Crowley, et al v. City of Bandon*, CA A130347 (LUBA No. 2005-100): The Court granted the Port of Bandon's motion to dismiss for want of timely service.
- *ZRZ Realty Company, et al v. City of Portland*, CA A128498 (LUBA No. 2004-098): The Court dismissed this appeal of the city's approval of amendments to the South Waterfront District Project Development Agreement.
- *Wetherell, et al v. Douglas County*, CA A130181 (LUBA No. 2005-075) and *Wetherell, et al v. Douglas County*, CA A129999 (LUBA No. 2005-045): The Court partially affirmed, and partially reversed and remanded to LUBA to reconsider the scope of its remand of a county determination that a 162-acre rural parcel is non-resource land. *The Court held that OAR 660-033-0030(5) is invalid because it conflicts with Goal 3. Department staff is discussing with Dept. of Justice staff how to proceed with amendment of this rule.*

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

The department had decided to hold back a portion of the grant fund to allow consideration of later-arriving applications that warrant funding. It is now getting late enough in the biennium that the remaining funds should be disbursed. Staff is working on preparation of these final grant agreements.

In late March, the department sent Planning Assistance grant offers to 143 cities and eight counties. These are small grants that the local governments may use for a wide variety of planning-related tasks. The offers are valid until the end of April. As of April 14, 35 of these grants had been executed and paid while 23 had been executed and were pending payment.

Intergovernmental Agreements

The department recently entered into an Intergovernmental Agreement with the City of Cannon Beach for Interpretive services at Haystack Rock, to be provided by Haystack Rock Awareness Program. The department is providing \$3,000 for partial support of the service.

Coastal Federal Fund Grants

The Coastal Services Division will again provide several kinds of federally funded grant awards to coastal local governments. In early April the Department notified local governments that grant assistance will be awarded in three categories: \$340,000 via formula to coastal cities and counties to support basic planning services, \$150,000 via competitive proposals for technical assistance or priority planning projects, and \$31,000 for non-point pollution control programs. In addition, the Department has selected five proposals for a total of \$150,000 in special 306A funds for small-scale construction and acquisition projects in Manzanita, Port of Garibaldi, Depoe Bay, Yachats, and Port of Bandon. The total federal grant funds to local governments beginning July 1, 2006 will be \$671,057

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

Activity at the state and local level regarding periodic review task completion remains low. Please see Attachment A for a summary of recent submittals and decisions.

The summary shows three decisions partially or wholly remanded by the department. Task submittals from Curry County and Cornelius were partially approved and partially remanded. Two related tasks from Salem were remanded. All three related to transportation system plans (TSPs).

Curry County's TSP was largely approved, but was remanded to better address bicycle and pedestrian facilities, include an analysis of needs of the transportation disadvantaged, define minimum levels of service for county roads, resolve and complete information regarding transit service, and make minor technical fixes. The Cornelius TSP submittal was also mostly approved, but partially remanded for the city to address compliance with Metro parking requirements, analysis of local street width, need for services for the transportation disadvantaged, and adoption of zoning map and code amendments to implement the TSP. Salem's submittal addressed the "alternative standard" for reduction of per-capita vehicle miles traveled and implementing codes; this remand has been appealed to the Commission. (See Agenda Item 5a)

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 quarter 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 7.25 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 – 26/70 (through one quarter)

2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. PLANNERS’ NETWORK MEETINGS

A Planners’ Network meeting is planned for the mid-Willamette Valley for May 9. The meeting will be held in Keizer; Marion, Polk and Yamhill County and their cities have been invited.

The Coastal Division held two Planners’ Network meetings in early April. The April 7, 2006, Coastal staff met in Seaside with planning staff from Clatsop, Tillamook, and Lincoln counties, the cities of Tillamook, Rockaway Beach, and Seaside, The Tillamook Bay Estuary Partnership, and CREST, the Columbia River Estuary Study Team. On April 14, Coastal staff met in Bandon with planners from Douglas, Coos, and Curry counties and cities of Florence, Reedsport, North Bend, Coos Bay, Bandon, Gold Beach, and Brookings.

B. TRANSPORTATION AND GROWTH MANAGEMENT

Implementation of the joint ODOT-DLCD Transportation and Growth Management (TGM) is continuing.

For the 2005-2007 biennium, the TGM program has awarded 47 grants to cities and counties totaling \$4.3 million. Grants will assist communities in updating their

transportation system plans and preparing detailed plans for downtowns and other areas planned for mixed use development. TGM staff are currently working with local governments to finalize statements of work and hire consultants to help prepare the plan updates.

TGM's three community assistance programs - Code Assistance, Quick Response and Outreach - also have a number of projects underway. Of note, the Outreach program is working with the Oregon Association of Realtors to co-sponsor a workshop on transportation and growth issues in the Bend area this fall.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

Jason Locke began his employment as a Willamette Valley Regional Representative on April 12. Jason will represent the department with urban jurisdictions in the mid-Willamette Valley, mostly in Marion County and Polk County. The Commission may remember Jason from the bus tour of Bandon, where he was formerly the Community Development Director.

Jody Houry will begin her employment with the department on April 25, as a part-time administrative assistant providing support to the SB 82 Task Force on Land Use Planning. Jody was most recently employed at the Department of Administrative Services, where she has held a number of administrative and operations positions.

B. RECRUITMENTS

The department has completed interviews for the Mineral-Aggregate Specialist position. The report on that recruitment will be updated at the commission meeting.

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.
- Ongoing Legislator Brown Bag Lunch Forums

- Measure 37 Environmental Law Conference (Portland, April 7)
- Oregon Coastal Zone Management Association luncheon Florence, April 13)
- South Coast Planners' Network Meeting (Bandon, April 14)
- Citizen Involvement Advisory Committee (Salem, April 20)
- House Interim Land Use Committee (Tigard, April 26)

D. TRAINING

In cooperation with the Department of Consumer and Business Services, DLCD is offering its staff the opportunity to attend training on negotiation. "Mastering the Difficult Negotiation", presented by Nebraska Senator David Landis, will provide an interactive experience for department staff in discovering a better way to approach, conduct, and complete negotiations, a way that is based on:

- Getting to "Yes"
- Mutual win
- Understanding what is most important
- Best serving the public good

On February 24, the Coastal Services held a day-long training session in Astoria for "local decision-makers" from Clatsop and Tillamook counties entitled CZM 101: Making Land Use Decisions in Oregon's Coastal Zone. "Faculty" for the day included seven DLCD Coastal Services Division staff who gave presentations and took questions on: overall state land use program framework, state and federal coastal zone management program, local government decision-making, special coastal planning issues, and state-federal permits in the coastal zone. About 45 people attended, including elected officials, planning commission members, planning staff, and consultants. Feedback, based on written evaluations, was generally positive. A second CZM 101 is planned for Southwestern Oregon Community College on May 19.

4. LEGISLATIVE INTERIM UPDATE

The Interim House Committee on Land Use is scheduled to meet at 6:30 PM in Tigard on April 26 at the Tigard Elementary School. The agenda consists of invited testimony, including Director Lane Shetterly, regarding Measure 37 and the regionalization of LCDC. The committee will also hear testimony regarding annexation issues.

The Joint Committee on Emergency Preparedness Subcommittee On Natural Disaster met April 17 at the capitol for an informational meeting. At the request of the subcommittee, DLCD's Natural Hazards and Flood Plain Representative, Christine Valentine, presented information regarding flood preparedness status and needs.

5. LCDC POLICY AND RULEMAKING UPDATES

Revised Periodic Review, Rural Communities, and State Parks rules, adopted at the Commission's March meeting, were filed with the Secretary of State's office and are now in effect.

Ongoing rulemaking or other workgroup activity is described below:

A. MINERAL AND AGGREGATE CONSENSUS GROUP

The farmers/mining interests met as a subcommittee of the Consensus Group on April 19 to discuss mining on Class 1 and 2 farmland, and ways to address alternative sites. The group did not agree on a proposal to present to the larger group, but agreed to meet again in a month.

B. UGB AMENDMENT PROCESS WORK GROUP

The workgroup met on March 9 and April 13, in order to determine whether the UGB rules previously proposed by the workgroup could be divided into a near-term and longer-term set of rules based on complexity and controversy. The workgroup agreed that several of the safe harbors that have been previously studied were probably of a lower level of controversy and should be assembled into a proposed set of rules for consideration by the commission this summer. The workgroup asked staff to draft these rules for consideration by the workgroup at a meeting scheduled for May 2, 2006.

The League of Oregon Cities (LOC) has suggested that the commission appoint another workgroup member representing cities, Steve Bryant, acting LOC Executive Director. Chair Worrix raised this to the workgroup for discussion on April 13. No objections were raised to the appointment. The department suggests the commission consider this at the May meeting, and provide an opportunity for public comment. In considering this appointment, the commission should also consider a proposal by the Special District Association of Oregon (SDAO) to replace its representative on the workgroup. Burton Weast has retired from SDAO and has been replaced by Kelly Ross. Kelly has agreed to serve on this workgroup, if appointed.

C. TRANSPORTATION PLANNING RULE AMENDMENTS

Following the February 2, 2006 public hearing the Commission asked that the department respond to several specific issues and that the Joint OTC-LCDC Transportation Subcommittee be reconvened to assess whether further rule amendments are needed to address the goal exceptions "threshold" issue arising out the *1000 Friends v. Yamhill County* case.

The department has not yet been able to arrange a meeting of the joint subcommittee and currently anticipates that this issue would likely be considered by the Commission at its June 28-30 meeting in Pendleton.

In March, the department has also received a number of comments from local governments expressing concern about the proposed amendment that would allow for 28 foot streets as a “safe harbor” to meet the TPR’s skinny streets requirement. The department has advised local governments that it is reconsidering this recommendation and may recommend that the Commission not adopt this proposed amendment.

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

The Oregon Task Force on Land Use Planning met on April 18, 2006 in Salem. The primary topic discussed was the Task Force work program. Task Force members stated that one of the first activities should be public opinion research about Oregonian's values about land use planning. Members discussed the need to be able to identify values of Oregonians from different regions as well as other regional or demographic characteristics.

The Task Force also discussed how they would like to receive public input and participate in events organized by other organizations.

Staff is drafting a work program for review by the Task Force at the next meeting, Wednesday, May 10. The Task Force members hope to approve a final draft of the work program at a meeting on Wednesday, May 24.

Senate Bill 82 (2005) established the Oregon Land Use Review Task Force to “study and make recommendations on: (a) The effectiveness of Oregon’s land use planning program in meeting current and future needs of Oregonians in all parts of the state; (b) The respective roles and responsibilities of state and local governments in land use planning; and (c) Land use issues specific to areas inside and outside urban growth boundaries and the interface between areas inside and outside urban growth boundaries.”

For additional information, please contact Becky Steckler, Statewide Land Use Review Project Manager at 503-373-0050 ext. 286, or by email at becky.steckler@state.or.us.

ATTACHMENTS

- A. Summary of Periodic Review Tasks
- B. A quarterly summary of post-acknowledgment plan amendments (PAPAs)