

June 15, 2006

TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director
SUBJECT: **Agenda Item 12, June 28-30, 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 April 19 and June 12, 2006, the Department received notice of 40 appeals filed with LUBA. The department is not participating in any of these appeals.

LUBA opinions

Between April 19 and June 12, 2006, the Department received copies of 29 recently issued LUBA opinions. Of these, LUBA dismissed 16, affirmed 2, remanded 11, reversed 0, and transferred 0 petitions to circuit court.

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

- *Jaffer, et al v. City of Monmouth*, LUBA no. 2005-123, decided 4-24-06 (Goals 1, 2, 9, 10 and 12);
- *Wetherell v. Douglas County*, LUBA no. 2005-174, decided 5-15-06 (OAR 660-006-0050, 660-033-0130(4));
- *Wetherell v. Douglas County*, LUBA no. 2005-181, decided 5-17-06 (OAR 660-004-0018(2)(b), 660-004-0028(4));

- *Friends of Bull Mountain, et al v. City of Tigard*, LUBA no. 2006-005, decided 5-25-06 (OAR 660-014-0060, 660-018-0010(11), 660-023-0250(3)).

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

Other opinions of interest

- **Standing to appeal PAPAs to LUBA:** Standing to appeal a post-acknowledgment plan amendment under ORS 197.620(1) requires “participation” in the local proceedings, which means “an assertion of a position on the merits.” A mere “appearance” in the form of any kind of oral or written statement is not sufficient. *Century Properties, LLC v. City of Corvallis*, LUBA nos. 2005-004, 2005-005, 2005-006, 2005-007, 2005-008, 2005-09, 2005-010, 2005-011, 2005-012, 2005-013, 2005-014, 2005-015, 2005-016, 2005-017, decided 4-7-06.

Appellate court opinions

Between April 19 and June 12, 2006, the Department received no copies of recently issued opinions from the Court of Appeals.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

As reported in the last director’s report, the department was preparing to offer the remaining grant funds. That is nearly complete. A list of grant applications and awards is included for your information (Attachment A). Several technical assistance grant applications are still outstanding, most notably the City of Damascus’. The department is still refining the scope of work for that grant, and it is likely to be approved soon. The City of Scappoose application was received recently, and the grant manager has recommended denial. The City of Winston is seeking alternative sources of funding for its grant request.

Intergovernmental Agreements

Department is preparing an IGA with LCOG for sponsorship of the 2006 Oregon Planning Institute to be held in Eugene September 13-15, 2006. Amount of agreement is \$1,000.00, termination date of agreement is June 30, 2006.

Department is preparing an IGA with Oregon State University to identify and document the range of issues associated with the designation of a National Marine Sanctuary off Oregon that will need to be addressed in-depth by OPAC in it’s December 2006 report to the Governor. IGA amount is \$22,985, and termination date is June 30, 2006.

Department is preparing an IGA with DAS for development of standards, data and data stewardship plans relating to floodplains for Oregon’s Framework and, by extension, the National Spatial Data Infrastructure. Amount of agreement is \$50,000 and termination date is June 30, 2007.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

Since the last director's report, the department has made one decision on a task submittal—approving McMinnville's response to the remand of their UGB expansion—and received one submittal “in the manner of periodic review”—Metro Goal 5. A summary of recent periodic review activity is included in Attachment B. The Commission can expect to see both of these on its agenda later in the summer.

At its May hearing, the Commission approved continuance of the hearing on Salem's appeal of the department's remand of Tasks 3 and 5 to allow for mediation. That process is progressing.

2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. PLANNERS' NETWORK MEETINGS

DLCD hosted a Planners' Network Meeting in Keizer on May 9. Planners from Aurora, Dallas, Jefferson, Keizer, McMinnville, Monmouth, Newberg, Salem, Silverton, Woodburn, and Marion and Polk Counties attended, as did a planning commissioner from Willamina and city councilor from St. Paul. A consultant representing several cities in the region was also able to attend. Constance Beaumont, Ann Beier, Matt Crall, Jan DeVito, Ron Eber, Gary Fish, Gloria Gardiner, Rob Hallyburton Tom Hogue, Jason Locke, Bob Rindy, Lane Shetterly, Becky Steckler, Christine Valentine, and Cliff Voliva attended on behalf of the department.

Department staff provided an update on the Senate Bill 82 land use review effort, the Commission's policy agenda for the 2005-07 biennium, and updates on recent rule-writing efforts, the grant programs, the natural hazards program, the economic development planning team, and the Transportation and Growth Management Program. City and county representatives then discussed the issues that they are faced with. Main topics related to growth pressures in the region and related issues regarding transportation planning, urban growth boundary amendments, Measure 37. Urban renewal, public facilities financing, and training were also topics of discussion.

A meeting is planned for July 27 in Bend. Arrangements are in progress.

B. TRANSPORTATION AND GROWTH MANAGEMENT (TGM)

“Building Better Communities: Ways to Expand Housing, Economic and Transportation Choices” is the theme of a smart growth conference planned for October 18 in Bend. Organized by TGM, the Oregon Association of Realtors, and the Central Oregon Association of Realtors in partnership with Brooks Resources, the event will explore relationships between transportation, housing (including affordable housing), land use, economic vitality and urban design.

TGM is a cosponsor of two recent lecture series – one organized by the University of Oregon and the City of Eugene, another by Metro. The Eugene series included lectures on form-based codes and multi-way boulevards; the Metro series, presentations on innovative streetscape design and policies available to promote town centers.

DLCD recently received a complimentary copy of a new publication of the Sierra Business Council entitled “Building Vibrant Sierra Communities: A Commercial and Mixed Use Handbook.” The Acknowledgments include Gloria Gardiner (then TGM Code Assistance Planner; currently DLCD Urban Planning Specialist) and the Oregon TGM Program among those who contributed to the work.

The Sierra Business Council of Truckee, California, is a regional association of over 650 businesses and civic members with a mission “to secure the social, natural and financial health of the Sierra Nevada for this and future generations.”

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

Cora Parker began her employment with the department as Deputy Director on May 23. Cora comes to the department from the Oregon Economic and Community Development Department (OECDD) where she was the Central Operations Division Manager. In that capacity, she managed the department’s internal administrative functions, including activities related to contracting, fiscal reporting and accounting, facilities, information systems, and policy and performance measures, as well as the department’s business and public finance activities. Prior to joining OECDD, Cora was a policy and budget analyst with the Oregon Department of Administrative Services’ (DAS) Budget and Management Division (BAM). Cora’s agency assignments at BAM included OECDD, DAS, and the Public Employees Retirement System, among others. She was also responsible for several statewide areas including statewide General Fund cash flow and expenditures, Lottery allocation and expenditures, and statewide collective bargaining and salary adjustment issues. She was also the liaison between BAM and the Office of Economic Analysis, State Controller’s Division, and others on a number of statewide budget and accounting issues. Prior to joining BAM, Cora worked as the revenue economist with the Office of Economic Analysis. She also has experience as an analyst with the Debt Management Division of the Oregon State Treasury and as an auditor for the Oregon Secretary of State Division of Audits. Cora received her Bachelor of Business Administration from Gonzaga University where she was a finance major. She completed her MBA at Willamette University with a focus in public policy.

B. RECRUITMENTS

Prior to the Commission meeting the department will have concluded interviews for vacant Measure 37 staff positions. As of the date of this report, it is uncertain what positions will be filled through the current recruitment process. The department has established an open recruitment (until filled) for a Planner 3 position in the Measure 37 Claims Services division.

The department is recruiting for the position of Flood Map Modernization GIS Specialist (ISS-5). This position is limited-duration and is expected to extend through June 30, 2007. The position is stationed at the department's main office in Salem. This is an open competitive recruitment that will close on June 26, 2006.

The department is recruiting for a new Manager for the Planning Services Division, to replace Ann Beier. (See "Departing Staff," below.) This is an open recruitment that will close on June 30, 2006.

C. DEPARTING EMPLOYEES

George Naughton, Deputy Director since January 2005, has left the department to assume a new position in state government as the State Budget Director. The department thanks George for his dedication to the department and his leadership, particularly in his oversight of the Measure 37 claims process, and in the budget and management experience he brought to the department. The department wishes him well.

Ann Beier, Planning Services Manager, has left the department to become the Director of the City of Milwaukee's (as in, Wisconsin) Office of Sustainability. This office is situated in the office of the Mayor of Milwaukee. Ann has been with the department for six years, and has provided exemplary service and leadership in the management of her division, and the Measure 37 review process. The department wishes her well.

Jane Bacchieri is on a job rotation to the Governor's office, to serve as his Willamette River Restoration Coordinator. Jane has served as the department's Coastal Permits Specialist. The rotation to the Governor's office is scheduled to end at the end of December, 2006, but could be extended. Either way, the department will be pleased to receive Jane back at the end of the rotation, or to wish her well on an extended appointment in the Governor's office.

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 Legislator Brown Bag Lunch Forums

- Mid-Willamette Valley Planners Network Mtg. (Keizer, May 9)
- Oregon Task Force on Land Use Planning (Salem, May 10 and May 24)
- Oregon Downtown Development Association Awards Banquet (Canby, May 12)
- Retail Task Force Meeting (Portland, May 18)
- Tribal Day at the Capitol (Salem, May 19)
- Newberg/Dundee POST Meeting (Newberg, May 19)
- Meeting with Rep. Greg Smith and other local officials in Boardman regarding the Port of Morrow (May 22)
- MPAC Meeting at Metro (Portland, May 24)
- Northwest Association of Environmental Professionals (Portland, May 31)
- Meetings with the City of Damascus (Salem, June 1; Damascus June 15)
- League of Oregon Cities Board of Directors Meeting (Dallas, June 2)
- Governor's Economic Revitalization Team Agency Director's Field Trip to Central Oregon (Bend, June 6-7)
- Citizen Involvement Advisory Committee Meeting (Salem, June 8)
- Building Community Workshop for the City of Salem (Salem, June 9)
- Meeting with Jackson County Jack Walker regarding Jackson County issues (Medford, June 13)
- Metro Ag/Urban Coordinating Meeting (Portland, June 14)
- Urban Lands Institute Annual Conference (Redmond, June 15-17)
- Participate in the County College Program (Oregon City, June 16)
- Community Development Forum - Steering Committee (Salem, June 19)
- Collaborative Environmental and Transportation Agreement for Streamlining (CETAS) Directors Meeting (Salem, June 21)
- Attend Grand Opening of Tillamook Safeway (Tillamook, June 22)

D. TRAINING

Several department staff attended a department of justice training on administrative rule writing, including Bob Rindy, Rob Hallyburton, and Michael Morrissey.

Several department staff including Becky Steckler, Stacy Hopkins, Jason Locke, Matt Crall, Tom Hogue, Constance Beaumont and Jan DeVito attended Mastering the Difficult Negotiation, a 1.5-day training seminar offered through the Luke Center for Catalytic Leadership. Nebraska state senator David Landis led the training. The training focused on discovering better ways to approach, conduct and complete negotiations in a way that:

- * “gets to yes”;
- * strives towards mutual wins;
- * understands what is most important; and
- * serves the public good.

Techniques were demonstrated through role-playing exercises and through description of real-life negotiations. This was a well-organized, well-presented above average seminar that would benefit all DLCD staff.

4. LEGISLATIVE INTERIM UPDATE

A. LEGISLATIVE BROWN BAG FORUMS

The department invites legislators to a monthly “brown bag lunch” to discuss land use issues that may be of interest to legislators. Senator Nelson and Representative Sumner attended the Wednesday, June 7 Brownbag. This meeting was primarily intended to focus on the Land Use Task Force, including its recently adopted work program. Discussion also included Measure 37. The department’s next legislative brownbag is scheduled for July 5th.

B. ANNEXATION WORKGROUP

The legislatively established “SB 887 Annexation Work Group” met for the first time on Monday, June 12. As a result of legislative discussions over annexation issues, SB 887 established an informal workgroup to discuss annexation issues and report to the interim House Land Use Committee. As per the statute, the workgroup includes cities, counties, special districts and other interest groups. Legislators are not members of the group, and DLCD is not named as a participant. Bob Rindy will be monitoring the group because land use issues are one of the topics to be discussed. The June 12 meeting was a public meeting, but no public testimony was taken. Future meetings are scheduled for July 6th and 19th.

5. LCDC POLICY AND RULEMAKING UPDATES

The department has received a request from a county to consider amendments to a current administrative rule, OAR 660-04-018(2), which requires a “single numeric minimum lot size” for exception areas. Many acknowledged county codes have not updated their code

since the 1998 adoption of this rule and do not currently employ a single numeric minimum lot size in their rural commercial and industrial zones. DLCD has researched reports and other materials regarding the 1998 amendment and, while the record is inconclusive, at this point we believe the requirement was intended to apply to rural residential zones, not rural commercial or industrial. DLCD is now trying to decide whether to ask LCDC to initiate the rule-making process, and an important factor is whether this would be considered a “minor” or “significant” amendment. Our interest is in the former. The department sent a message to those involved in the erstwhile rural commercial/industrial work group and to other interest groups and expects to present the results of the feedback at the June meeting.

Other activities involving the Commission’s policy agenda include:

A. 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 did not meet since the last director’s report, but a subcommittee of miners and farmers met on June 8th to discuss mining on Class 1 and 2 farmland, and ways to address alternative sites. Greg Wolf and Elaine Hallmark, conveners of the consensus group, met with state agencies prior to the subcommittee meeting to also discuss various proposals under discussion. The subcommittee did not agree on a proposal to present to the larger group, but agreed to meet again in a month.

The Department of Geology and Mineral Industries (DOGAMI) and the Department of Consumer and Business Services have convened a group of agencies, including DLCD, to work toward streamlined waterway permit procedures. A subcommittee of that group has been convened to respond to a budget note regarding aggregate mining, attached to several state agency budgets, including DLCD’s budget. Bob Rindy is attending the subcommittee meetings for the department. The sub-committee has met four times to discuss a response to the budget note, including a proposed memorandum of understanding (MOA) among agencies involved in aggregate permit hearings. Agencies include: ODA, DEQ, DOGAMI, WRD, DSL, Parks, and ODFW Laura Leshner of DCBS chairs the subcommittee.

B. UGB AMENDMENT PROCESS WORK GROUP

Agenda Item 5 provides information on this workgroup and its activities.

Recently-appointed workgroup member David Glennie, representing commercial realtors, has indicated he will not be able to continue with this project. Commercial realtor Bob LeFeber has agreed to join the group in his place. Mr. LeFeber was part of the previous workgroup appointed in 1999 to work on the UGB process. The department recommends that LCDC appoint Bob LeFeber to this position.

C. TRANSPORTATION PLANNING RULE AMENDMENTS

Proposed amendments to the Transportation Planning Rule (TPR) are scheduled for a work session and adoption at this meeting – see Agenda Item 6.

The department has also scheduled a meeting of the Joint OTC- LCDC Transportation Subcommittee for August 15 in Salem. The subcommittee will discuss whether additional amendments to Section 0070 are warranted to address the issue of thresholds for approval of goal exceptions for transportation facilities on rural lands.

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

See Agenda Item 10.

ATTACHMENTS

- A. General fund grant summary
- B. Periodic review activity summary