

November 10, 2005

TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director
SUBJECT: **Agenda Item 17, Nov. 30 – Dec. 2, 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.

Department participation in appeals

Between September 1 and October 31, 2005, the Department received notice of 30 appeals filed with LUBA.

LUBA opinions

Between September 1 and October 31, 2005, the Department received copies of 44 recently issued LUBA opinions. Of these, LUBA dismissed 16, affirmed 14, remanded 9, reversed 3, and transferred no petitions to circuit court.

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

Home Builders Association of Lane County v. City of Springfield, LUBA #2004-118 and 2004-142; *Home Builders Association of Lane County, et al v. City of Eugene*, LUBA #2004-126 and 2004-127: Goal 11, OAR 660 division 11.

Sommer v. Josephine County, LUBA #2004-131: Goal 4, OAR 660-006-015(2).

Lengkeek v. City of Tangent, LUBA #2004-164: Goals 1, 2, 3, 10, 11 and 14; OAR 660-004-0020(2)(d); OAR 660-008-0010.

Patterson v. City of Independence, LUBA #2004-220: OAR 660-014-0060 & 0070.

Wetherell v. Douglas County, LUBA #2005-045, 2005-070 & 2005-075: Goals 3 and 4, OAR 660-004-0040(7), OAR 660-033-0020(1) and 0030(3).

Friends of Yamhill County v. Yamhill County, LUBA #2005-057: Goal 14, OAR 660 division 22.

Kemp v. Union County, LUBA #2005-069: Goal 5, OAR 660 division 23.

Grahn v. City of Newberg, LUBA #2005-080: Goal 9, OAR 660-009-0010(4).

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

Appellate court opinions

Between September 1 and October 31, 2005, the Department received copies of 8 recently issued opinions from the Court of Appeals. The Court remanded all of these cases to LUBA.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

Please see materials for Agenda Items 8 and 9 regarding the grants program briefing and the 2005-07 Grants Allocation Plan.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

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

2. DEPARTMENT PROGRAM ACTIVITIES AND INTITIAIVES

TRANSPORTATION AND GROWTH MANAGEMENT PROGRAM

Transportation and Growth Management (TGM) outreach workshops recently took place in Lincoln City, which seeks to make new development more transportation-efficient and pedestrian-friendly. Outreach workshops in Molalla and Silverton have been tentatively scheduled for early December. Molalla and Silverton have received TGM grants for major downtown planning initiatives, and the workshops offer a way to familiarize local civic and business leaders with “best practices” in transportation and land use planning. TGM is interested in scheduling other workshops with Oregon communities that wish to make their downtowns, neighborhoods, and commercial areas more walkable and transit- or bike-friendly.

TGM will co-sponsor a presentation, “Walkable Schools, Livable Communities,” by Thomas Hylton, author of *Save Our Land, Save Our Towns*, on November 14 in Bend. The presentation is part of the *Building a Better Bend* lecture series. A follow-up presentation by Hylton is set for November 15 in Salem.

In an effort to publicize its recently revised *Model Development Code and User’s Guide for Small Cities*, TGM placed an article, “A Model Code for Small Cities,” in the League of Oregon Cities’ monthly journal, *Local Focus*. The article explains code features intended to remove barriers to smart, transportation-efficient development. (See Attachment B.)

A TGM article, “The Benefits of Neighborhood Schools on Smaller Sites,” appeared in the August/September 2005 issue of the *Oregon Planners’ Journal*. The article discusses creative approaches to school siting challenges facing local school districts insofar as they relate to transportation and land use issues. An article in the November 6, 2005 issue of *The Oregonian* focused on school siting. The goal of TGM’s work on school siting (including its recent publication of *The Oregon School Siting Handbook*) is to make it easier for students to walk or bike to school. (See Attachment C.)

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

Mark Darienzo, the department’s mineral and aggregate and natural resources planner has accepted the position of Map Modernization Specialist with the department’s Natural Hazard’s program. This position is a limited duration position funded by the Federal Emergency Management Agency to help Oregon communities update their flood hazard maps. Mark will be working closely with Christine Valentine, the department’s natural hazards specialist and FEMA on this important project.

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.
- Oregon Association of Farm Appraisers and Managers (Keizer, October 20)

- Government-to-Government Summit (Portland, October 21)
- Oregon Municipal Finance Officers Conference (Portland, October 26)
- Economic Development Forum (Ontario, November 8)
- Economic Revitalization Team Directors Tour (Cascade Locks, Nov. 9)
- Metro Policy Advisory Committee (Portland, Nov. 9)
- League of Oregon Cities Conference (Eugene, November 11)
- Association of Counties Annual Conference (Eugene, November 16)
- Lane Council of Governments (Eugene, November 16)
- Selected Investor's Meeting (Salem, November 17)

C. TRAINING

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

Several Staff members including Bob Rindy, Teddy Leland, Shelia Preston, Gloria Gardiner, and Steven Santos participated in the Administrative Rules Training that was sponsored by the Department of Administrative Services.

Gloria Gardiner attended the Housing Conference at Metro.

Several Staff members including Cliff Voliva, Bob Bailey, Constance Beaumont, Matt Crall and Mark Darienzo participated at this year's Community Planning Day at OMSI.

Ann Beier, Planning Service Division Manager, attended the Lincoln Institute of Land Policy's sixth annual workshop for State Planning Leaders in the west. Representatives of 19 western states attended. Topics included an evaluation of approaches to land conservations (regulatory vs. the use of land trusts), a field tour of transit oriented development in the Boston metropolitan area, a discussion of population and land use trends in western states and a discussion of transportation investments and priorities.

4. LEGISLATIVE INTERIM UPDATE

INTERIM LEGISLATIVE ACTIVITIES

On October 28, 2005, the Speaker named members to a House Interim Committee on Land Use. The Speaker announced that the House Interim Land Use Committee "will examine issues related to Oregon's land use system, including Measure 37, annexation, private

property rights, and related state agencies.” The appointed members are: Rep. Bill Garrard, Chair; Rep. Bob Jenson, Vice-Chair; Rep. Robert Ackerman; Rep. Terry Beyer; Rep. Sal Esquivel; and Rep. Mac Sumner. The Senate also named several interim committees, but did not name an interim land use committee. However, the Senate President’s office indicated additional committees are still under consideration, so it is possible a Land Use Committee could be named later.

Bob Rindy met with the Department of Aviation to discuss formation of a workgroup and process for that department to draft administrative rules in response to 2005 legislation regarding commercial activities adjacent to airports (SB 680).

The Governor’s Mineral and Aggregate/Farmland Consensus Group has not met since August 31, 2005. However, information gathering by PSU, which was set in process by the Consensus Group earlier this year, has continued and is near completion. This has included a process for group members to comment on the research, and a robust discussion has occurred throughout the year with regard to the research. The group intends to meet in December, but a date had not been determined at the time of this report.

5. LCDC POLICY AND RULEMAKING UPDATES

The department produced a summary of LCDC’s decision at its last meeting in Bandon regarding a 2005-07 Policy Agenda. A copy of the summary is attached. (Attachment D) The commission indicated it will continue the policy agenda discussion in February.

The Oregon Parks and Recreation Department contacted the department and requested that the Commission consider some housekeeping amendments to LCDC rules regarding state parks planning (OAR 660, Division 34). The department indicated this discussion could occur at the February meeting at the time LCDC continues its discussion of the Policy Agenda.

Updates regarding ongoing policy work groups are provided below:

A. RURAL COMMERCIAL AND INDUSTRIAL WORK GROUP

This work group has not met since the summer. The Commission decided at its September meeting to discontinue this project and consider whether to resume at the February meeting.

B. 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.

C. GOAL 9 RULE MAKING WORK GROUP

Information on this rulemaking activity will be presented separately under Agenda Item 4.

D. TRANSPORTATION PLANNING RULE

Information on this rulemaking activity will be presented separately under Agenda Item 2.

E. PERIODIC REVIEW

HB 3310 (2005) made changes to the periodic review statute in response to the recommendation from the interim committee on that topic. The statute will require conforming changes to administrative rules on periodic review (OAR 660, division 25). Staff is working on preparing and editing the first draft of amendments to these rules to address the bill and will also propose other needed “housekeeping” changes to the rules. The department anticipates the proposed rule amendments will be scheduled for public hearing and possible adoption by the Commission at its February meeting.

6. BALLOT MEASURE 37 UPDATE

Information on department activities relating to Ballot Measure 37 will be covered separately under Agenda Item 10.

7. TASK FORCE ON LAND USE PLANNING UPDATE

An oral report on the status of the Senate Bill 82 Task Force on Land Use Planning will be presented at the Commission Meeting.

Attachments

- A. Periodic Review Activity
- B. “A Model Code for Small Cities”
- C. “Benefits of Neighborhood Schools on Smaller Sites”
- D. Department’s 2005-07 Policy Agenda