



Oregon

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TO: Land Conservation and Development Commission

FROM: Jim Rue, Director

SUBJECT: **March 21, 2013, LCDC Meeting**

DIRECTOR'S REPORT

I. INFORMATION UPDATES

ORS 197.090(2) requires the Director of the Department of Land Conservation and Development (DLCD) to report to the Land Conservation and Development Commission (the commission or LCDC) on each appellate case in which the department participates and on the position taken in each such case.

ORS 197.040(1)(c)(C) requires LCDC to review recent Land Use Board of Appeals (LUBA) and appellate court decisions to determine whether goal or rule amendments are needed.

A. **PARTICIPATION IN APPEALS, AND RECENT LUBA AND APPELLATE COURT OPINIONS**

Between January 14, 2013 and February 14, 2013, the department received copies of 16 notices of appeal filed with LUBA. The department filed one of these notices.

Department of Land Conservation and Development v. Crook County, LUBA No. 2013-007, filed January 10, 2013. An appeal of a county ordinance involving a comprehensive plan text amendment, a land use regulation amendment and a Big Game habitat map adoption. Appeals have also been filed by the Oregon Department of Fish and Wildlife and Central Oregon Landwatch.

1. **Department participation in appeals**

None

2. LUBA Opinions

Between January 4, 2013 and February 26, 2013, the department received copies of 19 recently issued LUBA opinions. Of these, LUBA dismissed nine, remanded six, reversed one, affirmed three, remanded in part and transferred none, invalidated no local decisions, and transferred no petitions to circuit court.

One decision concerns the application or interpretation of a statewide planning goal or LCDC administrative rule:

Goal 4: *Friends of Douglas County v. Douglas County*, LUBA No. 2012-053, issued January 8, 2013. LUBA dismissed an appeal of a county decision approving an application for a forest template dwelling.

The petitioners alleged that the county failed to process an application for a forest template dwelling as a “permit”, not providing either notice of the decision or a public hearing prior to issuing the decision. The county moved to dismiss the appeal as moot, because the applicant submitted a letter withdrawing the application that led to the challenged decision. The petitioners contested the movement to dismiss, arguing that the underlying county practice of denying public notice and opportunity for a hearing continued to adversely affect the petitioners, and there constituted an exception to the dismissal for mootness doctrine, applying to a decision that is “capable of repetition, yet evading review.” However, LUBA determined that the petitioners would continue to have the opportunity to appeal similar decisions by the county in the future, and therefore dismissed the appeal.

This decision does not require goal or rule amendments at this time.

3. Appellate Court Opinions

David Papworth v. DLCD and Lorelei Lewis, A148790. The department approved a Measure 49 final order for the applicant (Lewis) granting two additional homesites on a 42-acre parcel. At the time the applicant acquired the property (December 28, 1973) Washington County zoning required a minimum parcel size of 38 acres. However, this minimum parcel size included a sunset clause such that the minimum size would revert to 5 acres three days later (December 31). A neighboring property owner (Papworth) challenged the final order in circuit court, where it was upheld. The Court of Appeals, however, ruled that “lawfully permitted” is a “bright line” test that must be evaluated on the precise date of acquisition, and thus reversed the final order.

4. Other Opinions of Interest

Richmond Neighbors for Responsible Growth v. City of Portland, LUBA No. 2012-061, filed February 20, 2013. LUBA reversed a City of Portland decision approving a building permit for a

52,000 square foot four-story apartment building with 3,000 square feet of ground floor commercial space at the corner of SE Division and 37th Streets. The building also included no off-site parking. LUBA found that the approved building did not comply with the Main Street Corridor Overlay zone provisions of the city's Storefront Commercial zoning district because the main entrance for the residential units in the development was located on 37th Street, and the provisions of the overlay zone required this entrance to either face Division Street or be located at the corner of Division and 37th Streets. Since the opinion would require an extensive redesign of the building, LUBA accepted the petitioner's request to reverse, rather than remand, Portland's decision.

Kern Neighbors for Rational Growth v. City of Portland, LUBA No. 2012-85, filed February 26, 2013. LUBA affirmed a City of Portland decision approving a building permit for a 50-unit four-story apartment at the corner of E Burnside Street and NE 30th Street. The building also included no off-site parking. LUBA rejected the petitioners' challenge of the city's determination of the allowed height of the building. LUBA also rejected the petitioners' contention that the building permit was the type of permit defined under ORS 227.160(2) that requires either a public hearing, or notice of decision and the right to request a public hearing.

5. Appeal notices of interest

a. LUBA:

- Appeal of planned unit development by the City of Eugene: *Southeast Neighbors Neighborhood Association v. City of Eugene*, LUBA No. 2013-004, filed January 7, 2013. An appeal of a City of Eugene approval of a 47-lot planned unit development pursuant to the City's Needed Housing standards.
- Appeal of annexation by Lincoln City of the Roads End area: *Roads End Sanitary District v. City of Lincoln City*, LUBA No. 2013-002, filed January 4, 2013. An appeal by the sanitary district and others of the city's annexation of 246 acres constituting the Roads End area north of Lincoln City.
- Appeal of Metro UGB expansion for City of Lake Oswego: *Stafford Hills Club LLC v. Metro Council*, LUBA No. 2013-03, filed January 4, 2013. An appeal of a decision by Metro to add 9.8 acres to the Metro Urban Growth Boundary in the vicinity of Lake Oswego for the development of an indoor tennis facility and related park amenities.
- Appeal of farm stand permit in EFU zone: *Greenfield v. Multnomah County*, LUBA No. 2012-102, filed December 28, 2012. An appeal of decision approving, in part, an application requesting modifications to an existing farm stand in the Exclusive Farm Use Zone on Sauvie Island.
- Appeal of decision on Destination Resort Overlay: *Root v. Klamath County*, LUBA 2013-008, filed January 9, 2013. An appeal of a decision regarding application of a Destination

Resort Overlay to approximately 68,300 acres in Klamath County, on remand from a previous LUBA decision.

b. Measure 37/49

None

c. Other

None

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

The General Fund grant program had set a deadline of March 1, 2013 for amendments to 2011-13 grant agreements. The department received several amendment requests at the deadline and is processing them speedily.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

Since the commission's January meeting, the department has received a work task submittal from Troutdale regarding the economic development element of its plan and approved a task submittal for Tigard related to its transportation system plan. We received no objections to Tigard's task, so it is complete and cannot be appealed. The objection period for the Troutdale task has not expired as of the date of this report, but none have been received yet.

The department has recently received requests from Tigard, Troutdale and Pendleton to approve extensions for work task submittal dates on existing work programs. The department is permitted to allow one extension of up to one year.

II. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. COASTAL MANAGEMENT PROGRAM

Ocean and Coastal Services Division (OCSD) staff are involved with a number of coastal and ocean issues. Earlier this month the OCSD manager attended the annual Coastal States Organization meeting and NOAA Coastal Program Managers meeting in Washington DC. Program managers received information on new planning and budget issues at the federal level.

Marine Issues: The recent adoption of Territorial Sea Plan amendments included a new chapter and plan map, and the inclusion of a large collection of resource inventory geospatial data. OCSD has hired Todd Hallenbeck as a temporary employee to take the collection of data and produce a catalog of geospatial data that provides a record of this important process that can be discovered and used to access the information crucial to the decision making process. Todd is working with OCSD staff to produce a "smart" catalog of records and GIS web services that can

be used in the generation of online maps, website applications, and a publicly available archive of the GIS data. This information will be made available for distribution to regional ocean planning efforts (the West Coast Governors Alliance and the West Coast Regional Planning Body) and to the Bureau of Ocean Energy Management which will be conducting a planning exercise for the Outer Continental Shelf off Oregon for marine renewable energy in the coming year.

Several OCSD staff participated in a two-day Regional Data Framework (RDF) meeting in Portland. The RDF is an Action Coordination Team of the West Coast Governors Alliance and will be ensuring that data collected throughout the region is coordinated and compatible.

OCSD staff are also reviewing a number of ocean-related state legislative proposals.

Coastal Hazards: Several OCSD staff are involved with coastal hazards. Staff are working closely with Tillamook County, providing much needed technical assistance to the Neskowin Coastal Hazards Committee.

Staff are also involved with the DLCD Hazards Working Group which is addressing all hazards. Staff are working on tsunami planning guidance for local governments and providing technical assistance to local governments interested in UGB plan amendments in response to tsunami hazards. OCSD is working with a consultant to assist with development of a tsunami planning handbook. Staff are working with several local governments to better define their coastal shorelands boundary. OCSD staff have started implementation of a \$100,000 coastal resiliency grant from NOAA. The funds are being used to help the jurisdictions of Seaside, Gearhart, Cannon Beach and Clatsop County address coastal hazards including tsunamis and coastal erosion.

Several OCSD staff were involved with OSSPAC which developed a state resiliency plan recently finalized and submitted to the 2013 legislative session. OCSD's Coastal Shores Specialist and a staff member from OPRD will be attending a fellowship matching workshop this month to select a Sea Grant fellow to work on coastal shoreline protection issues for the next two years. The fellow will be jointly funded by DLCD and OPRD.

Estuary Updates: The Estuary Project of Special Merit is moving ahead on several fronts including: the translation of existing digital data into the new Coastal and Marine Ecological Classification System framework; the delineation of study area boundaries, and the compilation of existing digital datasets into a comprehensive data collection. This work is all being done in preparation for review by the technical specialist that was hired earlier in the year as a contractor for the project. All of the work being conducted now is in direct preparation for the generation of new habitat map products for each estuary along the coast. We are also in the early stages of planning a workshop for mid-May, when a group of technical experts will be convened to review and comment on the products being generated by the project.

Federal Consistency: The division has continued to make headway on updating and identifying specific "enforceable policies" within the local comprehensive plans and networked state statutes

that comprise the Oregon Coastal Management Program. The division has worked with NOAA's OCRM to streamline the process for submitting Routine Program Changes (RPCs), and has released two Requests for Proposals; one for assistance preparing local comprehensive plan RPCs, and one for preparing state statute RPCs.

In addition to the RPC work, the division worked with the Department of State Lands (DSL) to develop an explanatory guide and checklist that will assist both the division and DSL in implementing Part Two of the Territorial Sea Plan. The division and DSL are also working on a similar checklist for the recently amended Part Five.

In consistency review work, the division has seen an upswing in the number of federal permits that require consistency review, and has begun working with the U.S. Army Corps of Engineers on a major project to rehabilitate portions of the South Jetty at the Mouth of the Columbia River.

B. COMMUNITY SERVICES

In addition to the grants and periodic review work reported in subsections I.B and C above, CSD staff continues to be engaged in a broad variety of activities serving local government, other state agencies and the legislature. Staff is currently reviewing one periodic review task submittal for which the department received objections, and could therefore result in a commission hearing. Staff is working closely with four cities on urban growth boundary amendments that are likely to result in a submittal in the next few months (Junction City, Ontario, Newberg and Newport). Our Central Oregon Regional representative is working with Central Oregon Intergovernmental Council, the city of Redmond, and Deschutes County to prepare an inventory of industrial lands in Redmond to "test" the large-lot industrial sites process adopted by the county in 2012, and for which the commission adopted authorizing rules. Division specialists provide the initial analysis for many of the bills being reviewed by the department for the current legislative session.

C. DIRECTOR'S OFFICE

Director provided an oral update.

D. ADMINISTRATIVE SERVICES

The fiscal team continues working with the director's office and division managers to ensure accuracy in financial reporting and analyze and timely expenditure projections for 2011-13. A department-wide model is presented at each LCDC BAM Subcommittee meeting.

The department's presentation to the Ways and Means Subcommittee on Natural Resources occurred on March 12, 13 and 14. The director will report results of that conversation to you at your upcoming meeting.

The information technology unit continues working with department management in evaluating and determining current and future technological needs for the department.

The administrative services manager and key staff of the department continue long term efforts toward better department-wide information management. The coordinator is working with the administrative manager, the department's GIS and SharePoint workgroups and other key staff in implementing better information management and continues setting the stage for this five year effort.

E. PLANNING SERVICES

Two new employees (Marian Lahav and Lisa Peffer) joined the section Natural Hazards. We are currently working through the list of programs and projects to determine who will be responsible for what. In the Transportation Section, we are in discussions with ODOT to restructure the financial relationship between the two agencies for the 2013-2015 biennium. This would include the Transportation and Growth Management (TGM) program that supports local planning and the Oregon Sustainable Transportation Initiative (OSTI) that seeks to reduce greenhouse gas emissions. The goal is to simplify the accounting without changing the overall level of support for transportation and land use planning. In the Measure 49 section the major project is moving the database from server operated by an outside vendor to server operated by the department. Also in progress is research regarding property line adjustments and county compliance in general.

F. 40TH ANNIVERSARY

The commission's agenda for the afternoon of May 23 will include a panel presentation regarding the past, present and future of the statewide land use planning program. Two panelists for the afternoon have been secured, while staff is still working on filling out the group. Also, plan on staying for the evening at the Capitol for an informal gathering. The program for the evening is also still in the planning stages.

In conjunction with the 40th anniversary, the department has launched a project to record an oral history of the planning program. Staff assembled an advisory committee, which had its first meeting on March 11. The committee will help guide the project by recommending project scope, interview topics, and subjects. The advisory committee is composed of:

- Sy Adler, PSU Professor of Urban Studies and Planning and author of *Oregon Plans*
- Craig Beebe, 1000 Friends of Oregon Communications & Development Coordinator
- Richard Benner, former DLCD and Gorge Commission director and land use attorney
- Al Burns, Portland planner and former DLCD staff member
- Arnold Cogan, first DLCD director and long-time Oregon planner
- Hanley Jenkins II, Union County planning director and former LCDC member
- Jim Knight, former DLCD staff member and manager
- Donna Sinclair, PSU Urban Studies doctoral candidate and experienced oral historian
- Ed Sullivan, land use attorney, law professor and author

III. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF AND PROMOTIONS

Lisa Peffer was hired into the Natural Hazards Section. She previously worked for DLCDC as a natural hazards intern in 2011. Since then she has graduated from PSU with a master's degree in urban and regional planning, and worked temporary stints at DOGAMI and FEMA. Prior to becoming a planner Lisa worked as a community organizer and worked both in the U.S. and abroad.

Marian Lahav was also hired into the Natural Hazards Section. Previously she worked for the City of Vancouver in the comprehensive and environmental planning programs for over 20 years. There she dealt primarily with natural hazards and natural resources policy and code development in the context of Washington's "critical areas" regulations and Shoreline Management Program. Marian also was involved in comprehensive plan development, implementation, and maintenance. She has a master's degree in natural resource policy and management from the University of Michigan.

OCS&D hired Todd Hallenbeck on a temporary basis to organize and catalog the large inventory of GIS information that was collected and used during the TSP amendment process, a subset of which will be used to produce a final, "smart" catalog of records and GIS web services that can be used in the generation of online maps, website applications and a publicly available archive of the GIS data. Todd has recently completed his two-year SeaGrant West Coast Governor's Alliance (WCGA) fellowship with the Governor's Office and DLCDC. He was invaluable in the department's process to update the Oregon Territorial Sea Plan. After his current temporary position with DLCDC, he will be the new WCGA Regional Data Framework coordinator.

B. DEPARTING EMPLOYEES

With a deep sense of loss, Leslie Roth has decided to leave public service and DLCDC. She did an extraordinary job in the time that she was here and we will miss her very much. Please join me in wishing her the very best in the next chapter of her life.

Rachel Ferdaszewski accepted a job with Multnomah County to shorten her commute, leaving a vacancy in the TGM program.

C. RECRUITMENTS

A second round of interviews occurred March 11 for the TGM position that manages the Code Assistance Program.

IV. LCDC POLICY AND RULEMAKING UPDATES

A. LEGISLATIVE CONCEPTS

See Agenda Item 3

B. CURRENT RULEMAKING

No rulemaking is currently underway

C. OTHER POLICY ACTIVITIES

Local Park Planning Forum. The department is participating in a series of meetings to discuss and make recommendations regarding local park planning procedures and rules. The department will be recommending administrative rules to implement some of the recommendations from the forum. At the time of this report the final meeting has not occurred.