



Oregon

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TO: Land Conservation and Development Commission

FROM: Jerry Lidz, Acting Director

SUBJECT: **Agenda Item 9, June 22, 2011, LCDC Meeting**

DIRECTOR'S REPORT

I. INFORMATION UPDATES

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

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.

1. Department participation in appeals

Between March 29 and May 27, 2011, the department received copies of 26 notices of appeal filed with LUBA. The department filed one of these notices:

- *DLCD v. City of Banks*, LUBA No. 2011-39, filed May 5, 2011: Appeal of city ordinance amending urban growth boundary, transportation system plan, and recreation element of the comprehensive plan.

2. LUBA opinions

Between March 29 and May 27, 2011, the department received copies of 13 recently issued LUBA opinions. Of these, LUBA dismissed 5, remanded 5, reversed 0, affirmed 3, invalidated no local decisions, and transferred no petitions to circuit court.

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

- OAR 660-033-0130(3) & OAR 660-033-0140: *Mark Jones, et al v. Douglas County*, LUBA Nos. 2010-098, 2010-099, 2010-100, 2010-101, 2010-102 & 2010-103; issued April 26, 2011. Local decision was extension of a 1995 approval of a lot of record dwelling on a 78.43-acre parcel zoned exclusive farm use and designated Columbian White-Tailed Deer Habitat. Four of the appeals were dismissed because extension of a permit is not a land use decision subject to LUBA jurisdiction. LUBA remanded the county decision in the 5th appeal because 1) the county failed to provide the notice and *de novo* hearing required by statute for the extension, and 2) the county failed to provide the required notice to all affected parties for the 1995 approval.
- Goal 5, OAR 660-023-0250(3), Goal 12 & OAR 660-012-0060(1): *James M. Root, et al v. Klamath County*, LUBA No. 2010-079, issued April 19, 2011. LUBA remanded application of a Destination Resort Overlay to 90,000 acres.
 - The challenged decision allows new uses that could conflict with an inventoried Goal 5 resource, and the applicant's wildlife expert's findings do not establish that there will be no conflicts with off-site inventoried Goal 5 resources.
 - A condition of approval that prohibits development approval until mitigation measures address significant impacts to the transportation system does not comply with the TPR requirement for local government to address significant effects prior to plan amendment approval.
- OAR 660-006-0025(4)(q), Goal 16: *Citizens Against LNG, Inc, et al v. Coos County*, LUBA No. 2010-086, issued March 29, 2011. LUBA remanded approval of a permit for a 49.72-mile natural gas pipeline and a temporary 45-foot wide construction easement through the Forest, Exclusive Farm Use, Rural Residential, and Industrial zones.
 - OAR 660-006-0025(4)(q) neither authorizes nor prohibits this type of easement as a conditional use in a forest zone, and ORS 772.510(3) provides express authority for a temporary construction easement of the width necessary to construct the pipeline (assignment of error denied).
 - County findings did not adequately address potential impacts to the Olympia oyster where the pipeline would cross Haynes Inlet.
- Goals 17 & 18: *Oregon Coast Alliance v. Curry County and Oregon Shores Conservation Coalition v. Curry County*, LUBA Nos. 2011-005 & 2011-006, issued May 19, 2011. LUBA remanded county approval of a tentative master plan and subdivision plat for a destination resort on 378 acres zoned Forestry-Grazing with a Natural Hazard overlay and bounded by the Pacific Ocean, Oregon Islands National Wildlife Refuge, Pistol River State Park, Boardman State Park, and US Highway 101.

None of these decisions requires goal or rule amendments.

3. Appellate court opinions

Between March 29 and May 27, 2011, the department received copies of 3 recently issued opinions from the Court of Appeals. The Court affirmed 2 decisions without opinion and reversed and remanded the third.

4. Other opinions of interest:

- Events on EFU land; ORS 215.448(1): *Green v. Douglas County*, LUBA No. 2010-106, issued April 4, 2011. LUBA remanded the county's amendment of a 2003 conditional use approval to host events as a home occupation on a 6-acre parcel zoned Exclusive Farm Use - Cropland. Original CUP allowed weddings, receptions, reunions, and anniversaries. 2010 CUP amendment added bridal showers, luncheons, teas, business meetings, birthday parties, and memorial services, and also increased the permitted frequency of events. The 2010 CUP does not comply with the statute because 1) it allows events to be carried out almost entirely outside the buildings, and 2) more than 5 employees or independent contractors are employed for events.

5. **Appeal notices of interest:** None (other than the department notice mentioned under #1)

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

Agreements with ODOT: The department is in negotiations with ODOT regarding renewal of interagency agreements for joint administration of the Transportation and Growth Management (TGM) program and the Oregon Sustainable Transportation Initiative (OSTI). The agreement for TGM is an update of an instrument that has been renewed biennially since the early 1990s. The OSTI agreement is a renewal of the initial accord from last biennium, developed to implement House Bill 2001 (2009) and Senate Bill 1059 (2010) related to planning for greenhouse gas emission reduction. Both of these agreements must be executed by June 30, 2011.

The department is also in negotiations with the Lane Council of Governments regarding an interagency agreement related to department sponsorship of the Oregon Planning Institute, an annual conference hosted by the council of governments in Eugene. The department has sponsored the conference annually for many years.

The commission will discuss priorities for 2011-2013 grant investments under agenda Item 8. Staff will also provide a summary of the 2009-2011 grants program activities.

FY11 Federal Coastal Zone Management Grant: The department's annual federal coastal zone grant award has been caught up in the chaos and uncertainty surrounding approval by the Congress of the federal budget for FY11, which began nearly nine months ago in October 1, 2010. The budget reconciliation agreement enacted by the Congress in April directed a significant cut in the budget of NOAA, the National Oceanic and Atmospheric Administration, which was directed to prepare a "spending plan" based on this reduction for approval by the Office of Management and Budget prior to approval by Congress by the end of June, 2011. Preliminary guidance from NOAA provided to the states, based on its spending plan, shows that Oregon (via DLCD) will receive \$2,213,000, a reduction of \$133,000 from FY10. The Coastal Program Manager, Bob Bailey, and Coastal Grants Administrator, Diana Evans, have submitted a grant application to NOAA for \$2,213,000. It is almost certain that NOAA will not be able to process Oregon's grant application or those of the other states by the July 1 start-date due to the

delay and uncertainty throughout all of NOAA's grant programs. However, NOAA will authorize preapproval spending when the award is made, likely in August.

The budget outlook for the near future does not look any brighter. The President's proposed FY12 budget for state Coastal Zone Management grants (35 grants) is \$66.1 million, which is essentially level-funded from the President's requested FY10 level and is very close to the approved levels in FY06, FY07, FY08, and FY09. Word has it that there may be very deep cuts to NOAA's budget for FY 13, on the order of 25 – 30%, which would likely result in significant reductions to state coastal grants.

II. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. COASTAL MANAGEMENT PROGRAM

Coastal Program staff, led by Paul Klarin (Marine Affairs Administrator) and ably supported by Andy Lanier (Coastal Natural Resources Specialist), Tanya Haddad (Coastal On-line Services Administrator), Lorinda DeHaan (Coastal Administrative Services Specialist), and Todd Hallenbeck (Sea Grant Fellow), have assisted the Territorial Sea Plan Working Group (TSPWG) of the Ocean Policy Advisory Council (OPAC) to complete a series of public meetings to present and discuss the data and information that will be used by the department and the OPAC in developing a recommendation to the commission to amend the Territorial Sea Plan for ocean wave energy and related technologies. Meetings were held in Coos Bay, Brookings, Port Orford, Newport, Garibaldi, Astoria, and Salem. Information on these meetings can be found at www.oregonocean.info. The TSPWG will now consider the results of these meetings as a basis for developing preliminary alternatives for siting ocean energy facilities. The OPAC will then hold another round of public meetings on those alternatives before submitting a recommendation to the commission in late Fall, 2011.

After many years of discussion, the Coastal Program, in partnership with the Oregon departments of Fish and Wildlife, State Lands, and State Parks, launched a project entitled ShoreZone to acquire highly detailed oblique (from the side) aerial digital imagery of all coastal shorelands, both ocean and estuarine. These images will all be geo-referenced and will be processed and interpreted to create a data base of information about shoreline features such as habitats, geology, morphology, development, and jurisdiction. Andy Lanier is leading this project. A contractor began acquiring images on the low-tide series of May 31 – June 4. Funds for the project have come from the department's federal coastal zone management grant, the Department of Fish and Wildlife, and others. Similar ShoreZone imagery has been collected for Alaska, British Columbia, and Washington. Images and associated data will be linked to LiDAR data and will be useful in a variety of planning and management purposes and will be available to the public via the Oregon Coastal Atlas later this year. See the contractor's website for an overview of ShoreZone: <http://www.coastalandoceans.com/shorezone.html>

In late April, Bob Bailey, Coastal Division Manager, and Tanya Haddad participated in a week-long workshop to select the department's next NOAA Coastal Fellow. The new Fellow, Cinamon Moffett, is a 2011 double-Master's graduate of the University of Maine (fisheries and

marine policy) and has extensive experience in marine education and public outreach through the Port Townsend (WA) Marine Center. Cinamon will join the program for two years beginning August 1 and will work to compile all known current digital data sets about Oregon's estuaries (e.g. LiDAR, assessor's maps, biological surveys, aerial photos), create discrete sets of these data for each estuary, provide these data sets to local governments, and then work with local planners to provide training in using and incorporating these data in planning and decisions affecting estuarine areas.

The department's current Fellowship project by Fellow Laura Mattison was featured in the April 2011 issue of Coastal Management News posted by the NOAA Office of Ocean and Coastal Resource Management. See <http://coastalmanagement.noaa.gov/news/docs/czmnewsapr11.pdf>. Laura recently met with Louise Solliday, Director of the Department of State Lands, and Ken Bierly, Deputy Director of the Oregon Watershed Enhancement Board, to report on her project to inventory all dikes and levees in Oregon estuaries. She will be wrapping up her project by the end of August.

The Coastal Division has posted a number of documents on the Coastal Program's website <http://www.oregon.gov/LCD/OCMP/index.shtml>. Documents include the FY10 federal Coastal Management Grant Work Program, the December 2010 semi-annual performance report submitted to NOAA, and the 2011 – 20015 §309 Assessment and Strategy. These documents will enable the public to find information about the work, budget, and results of the Oregon Coastal Management Program. The division will update these documents when available.

The Coastal Division has scheduled its Fall Coastal Management Conference for October 13 – 14 at the Florence Events Center. The focus will be a review of 40 years of coastal management in Oregon and a look ahead.

B. COMMUNITY SERVICES

On April 25, Ed Moore, Rob Hallyburton, Darren Nichols and Jerry Lidz met with numerous local officials in Jackson County to discuss the status and next steps for the Bear Creek Valley Regional Problem Solving effort. City, county and regional officials appreciated the visit and were pleased to meet the department's acting director. The productivity of the meetings and the response from local officials reinforced the importance of the department's efforts to understand local and regional issues on the ground around the state.

The division is recruiting for a Southern Oregon regional representative. In the interim 12 months since June 2010, DLCD regional representative Ed Moore has picked up most of the workload in both the Southern Willamette Valley region and the Southern Oregon region. The department extends its gratitude to Ed for his efforts.

Grant Young continues to help both Hermiston and Pendleton with the completion of those cities' periodic review work tasks. Grant also filled in at the City of Pendleton to help the city planning department ease some of its workload issues resulting from its ongoing periodic review. Grant is commended for his extra efforts to assist communities in the region.

Jennifer Donnelly continues to work closely with Damascus and Metro and DOJ counsel on the successful completion of Damascus' Acknowledgment Continuance Order and compliance schedule. Community Services and Planning Services staff also continue to work with Metro staff in preparation for Metro's presentation of its coordinated population forecast to the commission (see agenda item 3). After the recent referendum election in Damascus, Jennifer, Steve Shipsey, Jim Rue and Jerry Lidz met with the city manager, planning director and city attorney to confirm that the acknowledgement process will continue to move forward.

Karen Swirsky and Jon Jinings worked closely with the director and DOJ counsel, and the City of La Pine to successfully complete the city's Acknowledgment Continuance Order and compliance schedule.

Jon Jinings continues to work closely with the director's office and a rules advisory committee to develop new rules to guide the siting of solar energy facilities on resource lands (see agenda item 6).

Steve Oulman and Anne Debbaut have also both taken on additional duties during the month of June to help with the closeout of 2009-2011 grant projects and the prioritization of 2011-2013 allocations. The division and the department are grateful for Steve and Anne's willingness to take on additional responsibilities.

C. DIRECTOR'S OFFICE

In addition to the various policy matters addressed below, activities in the director's office during April, May and early June included:

Week of April 11 – Internal meeting regarding coordination with DOGAMI on the Natural Hazards Program; Agency Heads; CIAC; several meetings with legislators regarding land use legislation; Governor's Natural Resources Cabinet; LCDC Legislative Subcommittee; meeting with Governor Kitzhaber regarding Regional Solutions Centers.

Week of April 18 – City of Damascus meeting; attending hearings on land use legislation; LCDC meeting.

Week of April 25 – Meetings regarding Regional Problem Solving in Central Point; directors and chairs of OBDD, ODOT and DLCD; Governor's Natural Resources Cabinet.

Week of May 2 – DLCD's budget hearings; meetings with legislators and others regarding land use legislation; meeting regarding FEMA and the Endangered Species Act; LCDC Legislative Subcommittee; hearing on land use legislation.

Week of May 9 – LOAC; hearings and meetings on land use legislation; Governor's Natural Resources Cabinet; meeting regarding FEMA and the Endangered Species Act.

Week of May 16 – DLCD Management Team; hearings and meetings on land use legislation; LCDC meeting; LCDC Legislative Subcommittee; City of Salem Sustainable City End-of-Year Celebration.

Week of May 23 - Regional Forum for Central Oregon EOA Project in Bend; DLCD Policy Team.

Week of May 30 – Regional Solutions meeting; Transportation Planning Rule Rulemaking Advisory Committee; LCDC Legislative Subcommittee; grant opportunity discussion with the Department of Human Services; Metro population forecasting discussion with Michael Jordan.

Week of June 6 – City of Damascus; Governor’s Natural Resources Cabinet.

D. OPERATIONS SERVICES

The Operations Services fiscal team is now working on calendar and biennium year-end activities which roll into the state’s Comprehensive Annual Financial Report (CAFR) and the Schedule of Expenditures of Federal Awards (SEFA) report. Several collaborative efforts are occurring between the fiscal unit and program coordinators to ensure financial reporting processes run smoothly. Government Accounting Standards Board (GASB) 54 implementation continues with assistance from the Department of Administrative Services.

The budget officer is working with the director’s office and the operations services manager in continuing to ensure financial reporting accountability. Division managers continue their critical roles in ensuring timely expenditure projections for 2009-11. The department’s 2011-13 Legislatively Adopted Budget has passed both Senate and House as of May 23 and is awaiting the Governor’s signature. Additional budget items may impact each agency budget through the “Christmas Tree” Bill. A final 2011-13 Legislatively Adopted Budget will not be known until session closes.

The information technology unit continues working with department management in evaluating and determining current and future technological needs for the department. Roll-out of Windows 7 will be 99% complete by June 1.

The operations manager and key staff of the department continue evaluating its long term efforts toward better department-wide information management. A facilitated meeting with internal and external partners produced a long term roadmap identifying long term and short term key efforts towards information management. The partners discussed ways to ensure mini-successes in its efforts and identified a two-prong internal and external approach for short term implementation. External approaches include: collaborating with public and/or private sector database experts to design a comprehensive framework for its database that has the ability to integrate information across DLCD databases including a geospatial component and is compatible with online submission of information; and collaboration with Department of Administrative Services Geospatial Enterprise Office (DAS GEO) in their Administrative Boundaries Framework group. These external efforts begin information transparency efforts for the department and assist

external stakeholders in receiving and submitting information electronically. Internal approaches will include: initial implementation of basic SharePoint for internal management of data and records, establishment of a workgroup to address internal protocols for information management, and review of internal processes enabling better information management. Additional information will be provided as the project moves forward.

E. PLANNING SERVICES

The Oregon Sustainable Transportation Initiative, a program administered jointly by DLCD and ODOT, was given several tasks to complete by legislation in 2009 and 2010. One of these, the Metropolitan Greenhouse Gas Reduction Target Rules, was filed with the Secretary of State on May 26, 2011. DLCD is also heading up development of the Scenario Planning Guidelines task. The guidelines were anticipated to be complete or nearly complete by June 30, 2011, but the project has encountered difficulties external to DLCD and ODOT, and the expected completion date now is later in 2011. The other tasks OSTI is completing are primarily the responsibility of ODOT, with DLCD involvement. DLCD and ODOT are currently in negotiations regarding future OSTI activities and responsibilities.

Measure 49 responsibilities have curtailed since the department issued the last decisions on claims. The work has not ceased, however. The one remaining staff member, Sarah Marvin, is spending time answering questions from claimants and counties regarding compliance with conditions of approval and other implementation issues. Sarah, working with a consultant, is also attempting to finish the design and construction of the Measure 49 database. Both of these tasks—customer service and the database construction/data input—will be ongoing for the foreseeable future. The department anticipates an on-going effort to complete Measure 49 related tasks, and is preparing a recruitment to fill the one remaining position permanently.

III. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF AND PROMOTIONS

None

B. DEPARTING EMPLOYEES

Gloria Gardiner, Urban Planning Specialist, has submitted notice of her retirement effective June 30, 2011. Gloria has worked for the department for 13 years.

Bob Bailey, Ocean & Coastal Services Division Manager, has submitted notice of his retirement effective October 31, 2011. Bob will have worked for the department for 26 years.

We wish them both the very best for whatever activities they choose in retirement.

C. RECRUITMENTS

The department is currently recruiting for a Planner 3 (Southern Oregon Regional Representative) position. This recruitment closed on June 3 and the department expects to conduct interviews with top candidates in late June and hopes to make a decision in early July.

A recruitment is currently underway for the Ocean & Coastal Services Division Manager position. This is a nationwide recruitment that is scheduled to close on July 5. We hope to have this position filled by October 1, which will allow a month overlap with Bob Bailey.

The Planning Services Division is recruiting an intern for the Natural Hazards program. The intern will, in addition to gaining valuable experience, assist Chris Shirley, floodplain program manager, with a variety of activities in the office and in the field.

IV. LCDC POLICY AND RULEMAKING UPDATES

A. CURRENT RULEMAKING

1. Transportation Planning Rule (TPR): The rules advisory committee (RAC) for the proposed rule amendments initiated by the commission at its April meeting met for first time June 1. Committee members discussed their interests in the TPR and operating protocols for the RAC. After a short backgrounder by staff, the RAC gave its initial direction to staff on three of the five topics expected to be covered. The RAC is planning to meet monthly and have a recommendation to the commission by the October meeting.
3. Solar Facilities on Farmland: See agenda item 6.
4. Irrigation Reservoirs on Farmland: See agenda item 7.
5. Department Facilitation of Soils Assessments on Farmland: See agenda item 10.

B. OTHER POLICY ACTIVITIES

1. Urban Forum: The department is continuing to meet with Portland State University faculty and Laurel Singer of Oregon Consensus to plan the Urban Forum. Next steps are to meet with a steering committee and to develop an on-line survey in preparation for the forum. AOC and LOC (Mike McArthur and Mike McCauley) have indicated a willingness to help convene the forum.
2. Legislative Session: See report under Commission Business, item 10b.
3. City of La Pine: The City of La Pine received the Compliance Order in mid-May acknowledging that the city's comprehensive plan complies with Oregon's Statewide Planning Goals 1, 3, 4, 6, 8, 9, 11, and 13. The city is working hard to complete drafts of the work outlined in the Compliance Order to comply with Statewide Planning Goals 2,

- 5, 7, 10, 12, and 14. Department staff has been meeting with the city's consultant on a near-weekly basis and has been reviewing draft code language.
4. Local Officials Advisory Committee (LOAC): LOAC met on the afternoon of May 9. Topics of discussion included the status of the Transportation Planning Rule and the Target Rulemaking Advisory Committee, floodplain permits and the Endangered Species Act, statewide planning needs and grant funds, and land use legislation of interest to the department. The committee will hold a joint meeting with LCDC in August.